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A TREATISE ON THE LAW

RELATING TO

Municipal Corporations

IN

ENGLAND AND WALES.

BY THE LATE

THOMAS JAMES ARNOLD,

OF LINCOLN'S INN,

One of the Metropolitan Police Magistrates.

THIRD EDITION

BY

SAMUEL GEORGE JOHNSON,

SOLICITOR,

Town Clerk, and Clerk of the Peace, of the Town and County of the Town of Nottingham.

LONDON:

SHAW AND SONS, FETTER LANE AND CRANE COURT E.C.,

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1883.

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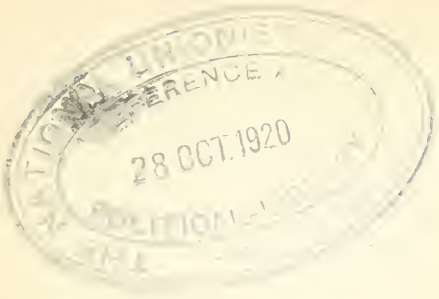

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PREFACE.

LIBRARY SETS

The Municipal Corporations Act, 1882, has been passed by the Legislature with the view of consolidating the Municipal Corporations Act of 1835 (5 & 6 Will. 4, c. 76), and the numerous Acts amending and extending the same.

The Municipal Corporations Act, 1882, does not, therefore, affect any borough which was not subject to the provisions of the Act of 1835.

It does not apply to the City of London, nor to unreformed corporations.

Neither does it touch any of the following Acts, although they are administered by municipal corporations, namely :—

The Public Health Acts, and the Consolidation Clauses Acts, incorporated therewith.

The Labouring Classes Lodging-houses Acts.

The Artizans and Labourers Dwellings Acts.

The Bakehouse Regulation Act.

The Acts relating to Baths and Washhouses.

The Acts relating to the Adulteration of Food and Drugs.

The Canal Boats, 1877.

The Acts relating to Contagious Diseases in Animals.

The Dogs Act, 1871.

The Act known as the Gardens in Town Protection Act, 1863 (26 Vict. c. 13).

The Commons Act, 1876.

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The Acts relating to the erection of Lunatic Asylums, and the care of Pauper Lunatics.

The Acts relating to Public Libraries or Museums, or Schools for Science or Art.

The Act generally known as the Municipal Corporations (Borough Funds) Act, 1872 (35 & 36 Vict. c. 91).

The Acts relating to the Superannuation of the Police.

The Local Loans Act, 1875.

The Public Works Loans Acts.

The Infant Life Protection Act.

The Burial Acts.

The Acts relating to the safe keeping of Petroleum.

The Weights and Measures Act, 1878.

The Tramway Act.

The Locomotives on Highways Act.

The Promissory Oaths Acts.

The Justices Clerks Acts, 1877.

The Borough and Local Courts of Record Act, 1872.

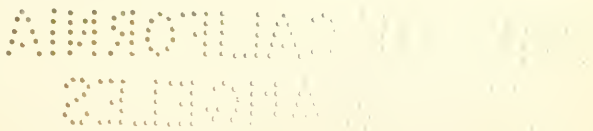
The Act does not affect the Elementary Education Acts.

It does not touch charters, further than they were affected by the Act of 1835.

Local Acts are exempted from the operation of the Act.

The work of consolidation was entrusted to Sir Francis S. Reilly and Mr. C. P. Ilbert, at that time, parliamentary draftsmen. The first Bill was introduced into Parliament in the year 1878. It failed to become law; and was re-introduced in the year 1879, very much in its present form. The pressure of business, however, prevented it passing until the close of the last session.

The difficulties of the undertaking were enormous; but they have been overcome through the great skill and labour of Sir F. S. Reilly and Mr. Ilbert. The highest praise must be awarded to them for the successful manner in which they have accomplished their arduous task.



The Bill, as it left their hands, was a model of consolidation.

After the Bill was introduced into Parliament, it was submitted by the Treasury to the writer, as a town clerk who had had much experience in the administration of the Acts proposed to be consolidated, in order that it might be examined and criticised from a practical point of view.

A considerable number of amendments were suggested; but most of these were considered inadmissible in a Bill purporting solely to consolidate the existing law. Subsequently the Bill was submitted to the Council of the Municipal Corporations Association, and carefully revised by Mr. R. S. Wright, who made some very important suggestions and corrections. The Bill was also sent by the Home Office to many town clerks, recorders, and other municipal and county officials. Many alterations were proposed, and, as far as these were consistent with the main object of the Bill, they are incorporated in the present measure. Some amendments were also introduced in the Bill in its passage through both Houses.

The result has been the production of an Act of Parliament which will be of the greatest value to all those engaged in the administration of municipal law.

Especial thanks are due to Mr. J. T. Hibbert, M.P., for the way in which he skilfully piloted this measure through Parliament.

The Act purports to be purely a Consolidation Act, and, generally speaking, this is so; but there are a few alterations, for the most part of a formal character, or else such as were necessarily incident to the proper interpretation of conflicting enactments. The most striking alteration is one introduced into the Bill in Committee in the House of Lords by Earl Powis. By the law, as it stood before the passing of this Act, the town council were obliged to elect the mayor from among the aldermen and councillors. The noble lord's alteration considerably extends the choice of the council, since he has added words

enabling the town council to elect a mayor, not only from the aldermen and councillors, but from those qualified to be such.

It will be found that this extension of the persons from whom the mayor may be chosen will not frequently be resorted to, as there are usually a number of gentlemen among the aldermen and councillors ready to take upon themselves the onerous duties of mayor. Nevertheless, it is an excellent provision for time of need.

Another amendment of less significance, but of greater utility, is the power conferred on town councils to appoint a deputy town clerk, to act in case of the illness or absence of the town clerk.

In many large towns this advantage has been secured by local Acts: and in others, the necessity of the case forced the town council, or the town clerk, to appoint a deputy. The powers of the deputy, in these instances, were extremely doubtful, and it is a good thing to have them definitely settled.

An amendment has been made in the disqualification attaching to a burgess on account of his having received "union or parochial relief or other alms." The word "union" has been introduced, at the instance of the Local Government Board, to avoid any difficulty that might arise from the relief given, having been a charge on the common fund of the union, under the Union Chargeability Act (28 & 29 Vict. c. 79).

This amendment has been carried further by a special exemption of those who have received medical or surgical assistance from the trustees of the municipal charities, or who have been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority, or whose children have been admitted to any public or endowed school.

The persons who can be removed *by the order of a justice* to a hospital, at the expense of the local authority, are those who are suffering from a dangerously infectious disorder, and who are without proper lodging or accommodation, or lodged in a room

occupied by more than one family, or on board any ship, or in a common lodging house.

It is very rarely that such persons have to be removed by the order of a justice. As a rule, the removal is the voluntary act of the sufferer. The writer ventured to suggest that the words "by order of a justice" should be omitted from the clause. In times of epidemic it is most important that no impediment should be placed in the way of the isolation of persons suffering from infectious diseases, and the clause, thus amended, would have rendered it clear that a burgess would not lose his vote by voluntarily allowing himself to be removed to a hospital. Perhaps the clause as it stands saves the right of the volunteer, for it would be contrary to common sense to hold that a volunteer, who confers a benefit on the community, should stand in a worse position than his obstinate neighbour, who has to be compelled, at the serious risks attendant upon delay, to obey the law. At all events, such a construction seems most agreeable to "convenience, reason, and justice."

Has the status of women, in relation to municipal privileges, been altered by this Act? It appears not. The Act declares that for all purposes connected with, and having reference to, the right to vote at municipal elections, words importing the masculine gender shall include women. If such a special provision had not been inserted, it might have been contended that as any *person* of full age, and qualified by rating and residence, may become a burgess, and as the candidate for corporate office must be selected from the burgesses, that there is nothing to prevent women, upon the burgess roll, serving any municipal office. This conclusion would have seemed inevitable, if the Legislature had not gone out of its way, to declare that women should have only one municipal privilege, that is, the right to vote.

The Legislature having done this, the plain inference is that there was no intention to confer upon women rights beyond those expressed. *Expressio unius, est exclusio alterius.*

There are other minor amendments, to which reference will be made in the proper place in the text of the Act; but they are not of sufficient importance to demand further attention here.

It was, no doubt, undesirable that fundamental changes in the law should be introduced into a Bill, having for its main object the consolidation of the existing law. Nevertheless, there were some grave difficulties in interpreting several of the existing enactments, that might have been fairly dealt with in a Consolidation Bill. These would not have been widely at variance with the existing law, but would have simply expressed what is generally understood to be the meaning of doubtful points, and would have materially added to the solid improvement of Municipal Law.

Some of these points will be noticed in the comments on the text of the Act. There is one point, however, of paramount importance which it was very desirable should have been cleared up. It is the question of what is a legal expenditure, by the town council, of corporate funds?

Any order of the council for the payment of money out of the borough fund may be removed into the Queen's Bench Division of the High Court, and wholly or partially disallowed or confirmed, on motion and hearing, with or without costs, according to the judgment and discretion of the Court.

With the exception of the remuneration payable to some officials, and certain payments to the Treasury, all payments out of the borough fund must be made by order of the council.

Now the 44th section of 7 Will. 4 & 1 Vict. c. 78, which conferred the right on all persons interested in the borough fund to apply for a *certiorari*, specially mentions that it is given for the purpose of affording a more direct and easy method for *misappropriation*. Although this recital is omitted from the Consolidated Act, there can be no doubt that no judge would entertain a motion for a *certiorari* except on the ground of misappropriation.

This, however, does not dispose of the difficulty. The question still remains, What is a misappropriation?

The Act of 1835 created a borough fund, into which, generally speaking, the whole of the income of the corporate body not derived from rates was paid.

Section 92 of that Act provided that certain expenditure should be paid out of the borough fund, and that there should also be paid out of the borough fund all other expenses not therein otherwise provided for, which should be necessarily incurred in carrying into effect the provisions of that Act. In case the borough fund should be more than sufficient for the purposes aforesaid, the surplus could be applied, under the direction of the council, for the public benefit of the inhabitants and improvement of the borough.

In the event of the borough fund proving insufficient, the council could then make a borough rate to meet the deficiency.

The Legislature made a distinction between boroughs where there is a surplus of the borough fund, and where there is a deficiency in that fund, to be supplied by a rate.

The principle (if any) upon which this distinction is founded seems to be this: Where the funds at the command of the council are derived from estates, tolls, fees, and such like, then the powers of expenditure are enlarged; but where the funds under the control of the council arise from rates, then the expenditure is restricted.

This principle leads us to the anomaly that an expenditure which is lawful in one borough is illegal in another.

Further, the difficulty is increased by the very definition of the objects for which a rate can be made, namely, *all other expenses which should be necessarily incurred in carrying into effect the provisions of the Act.*

Who are to be judges of these expenses? Common sense would naturally suggest the town council. They are the representatives of the ratepayers. They have administrative functions entrusted to them, and should have the best means of acquiring information upon the necessity of an expenditure; and whilst they

exercise their powers honestly, impartially, and without corrupt motives, the decision of that body should be final.

In the case of *The Queen on the Prosecution of Roberts and Others* v. *The Mayor, &c., of Sheffield* (L. R. Q. B. vol. vi. p. 652), certain orders of the town council for the payment of expenses incurred by the corporation for the public benefit of the inhabitants were held illegal on the ground that these were not expenses necessarily incurred in carrying into effect the provisions of the Municipal Corporations Acts. There is in Sheffield no surplus of the borough fund.

In giving judgment in this case, the Chief Justice said: The corporation were actuated by the laudable desire to protect the true interests of the borough, and to prevent the water company from frustrating a very important sanitary provision. He very much wished he could protect the corporation against the expenses which must now fall upon the individual members.

Mr. Justice Blackburn said: We must take it that the expenses were really incurred, and that the town council were coming forward—and were justified morally in coming forward—on the ground that they were protecting the interests of a large portion of the inhabitants.

Mr. Justice Mellor said: I am far from saying that the interference of the council in these matters was an officious interference. On the contrary, in all probability, in regard to some opposition at all events, I think it may be taken to have been properly made—that is, morally proper.

Mr. Justice Lush said: I cannot help thinking the corporation acted with perfect *bona fides*, in the genuine belief that they were acting for the benefit of the inhabitants; and, as I understand, the result shows that they were so acting.

There was no moral misappropriation, therefore, and yet the judges of the Queen's Bench held that they were bound in the exercise of their judgment and discretion to disallow a very proper expenditure, because they felt themselves bound by the technicali-

ties of the Municipal Corporations Act. Sufficient stress does not appear to have been placed upon the fact that the preamble to that Act recites that divers bodies corporate have been created, to the intent that the same might be and remain well and quietly governed. Surely it was the intention of the Legislature that a town council should have authority to incur any expense that may be necessary for this purpose!

Another case of great importance is that of the *Attorney-General* v. *Mayor of Brecon* (L. R. vol. x. Ch. D. p. 204). The judgment of the Master of the Rolls is a masterly exposition of the law relating to the expenditure of town councils in reference to the expenses of any attack made by Bill in Parliament, whether against their existence as a corporation, or against their property, or only against their rights, powers, and privileges, and is a direct authority for the legality of expenditure incidental to the existence of a corporation, though not expressly coming within the wording of the Municipal Corporations Act.

There is no doubt that the true intent and meaning of the Corporations Acts was to place the good rule and government of the borough in the hands of the town council, and as a consequence to give them the command of funds necessary for that purpose. It would be absurd to place in their hands the government of the town, and deprive them of the means necessary to carry on that government. To prevent misappropriation by jobbery, or fraud, or culpable carelessness, or corruption, the High Court has been clothed with a discretion to allow or disallow any such expenditure.

In any case in which the council have acted in the main for the interest of the borough with *bona fides, without intrusion, and in a manner that is morally proper,* the expenditure should be unquestionable. The suggestion made by one of the learned judges in the *Sheffield Case* that there were cases in which the council should interfere, and lend their name and the prestige of their authority, and spend money, and then recoup such expenditure by a subscription, is altogether impracticable.

Why not, then, in a Consolidation Act have made it clear what is legal expenditure by a town council? Nothing can be so unfair, or prejudicial to the public service, as uncertainty as to what acts of a governing body are legal. No one cares to take upon himself the thankless duty of serving the public with a halter round his neck.

It is hoped that this Act will be followed by an Amendment Act dealing with many questions affecting the good government of our towns, and dealing with them, not in the jealous and suspicious manner of former times, but in the just and generous spirit that the upright, judicious, and careful exercise of the trusts, already reposed in town councils, demands from Parliament.

The Consolidation Bill has rendered the Second Edition of Mr. Arnold's Treatise almost useless, and another Edition is called for. So much of Mr. Arnold's Work as retains its importance has been incorporated in the Introduction to this Work.

The Chapter on Practice at Municipal Elections has been carefully revised by Mr. J. H. Farmer, the Deputy Town Clerk of this borough.

It has been considered desirable to print in full the text of the Consolidation Act, and it is hoped that the notes thereon will be found of considerable service to those interested in its interpretation.

In the Appendix will be found those Statutes which are referred to in the Consolidation Act and form part of its machinery.

A copious Index has been added, and considerable pains have been bestowed upon it with the view of rendering it an easy means of turning to correlative enactments without burdening the text with too many cross references.

S. G. J.

Nottingham,
June, 1883.

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ERRATA.

Page 14, line 27, *for* "806," *read* "781."

Page 63, line 43, *for* "96," *read* "69."

Page 68, line 18, *for* "21," *read* "31."

Page 134, line 8, *for* "3 C. P. D.," *read* "3 Ch. D."

DIVISION I.

In this division those matters will be treated of which refer to corporations generally, and which do not come within the provisions of the Act.

CHAPTER I.

Of Corporations generally and of the Characteristics and Objects of Municipal Corporations.

Corporations generally.

A corporation is a creation of the Law, and may be defined to be a body politic, capable of maintaining a perpetual succession, for the purpose of keeping alive certain rights and privileges.

Sir William Blackstone has remarked, that as all personal rights die with the person, and as the necessary forms of investing a series of individuals, one after another, with the same identical rights, would be very inconvenient, if not impracticable, it has been found necessary, when it is for the public advantage to have any particular rights kept on foot and continued, to constitute artificial persons who may maintain a perpetual succession, and enjoy a kind of legal immortality. (1 Bl. Com. ch. 18.)

Thus, if it were considered advisable that a number of individuals should be associated together for any public purpose, it would be competent to them, generally speaking, to form a voluntary association to carry out that purpose; but such an association would possess no peculiar rights or privileges: they would not be empowered to make any regulations that would be legally binding upon the whole of the members, and in case of any property becoming vested in the association, with the view of carrying out its purposes, such property could only be continued

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to the successive members of the association, by a series of conveyances, repeated as often as the property changed hands.

But in the case of a corporation, the members and their successors are considered as one person in the eye of the law. Whatever rights or immunities are vested in the body at the time of its incorporation are transmitted to its successive members: they, or the majority of them, have power to make such regulations for the general conduct of the whole body, as may be considered most conducive to its welfare: these regulations, if not repugnant to the general law of the land, and if in accordance with the rules prescribed to the body at the time of its creation, will be binding upon all the members; and whatever property is vested in the body, remains vested in the successive members without any fresh conveyance, but by the mere operation of law.

Corporations, according to the law of England, are either aggregate or sole.

A corporation aggregate consists of several persons united together into one society, which is kept up by a perpetual succession of members, so as to continue for ever. Of this kind are the mayor, aldermen, and burgesses of a borough; the head and fellows of a college; the dean and chapter of a cathedral church.

A corporation sole consists of one person only and his successors, in some particular station, who are incorporated by law in order to give them legal capacities and advantages which in their natural persons they could not have had, particularly that of perpetuity. In this sense the king or queen regnant is a sole corporation; so is a bishop, and so is every parson or vicar.

Corporations are, further, of two kinds: ecclesiastical and lay.

Ecclesiastical corporations consist entirely of spiritual persons, such as deans and chapters, or bishops, or vicars.

Lay corporations are of two sorts, eleemosynary and civil.

Eleemosynary corporations are such as are constituted

for the perpetual distribution of the free alms or bounty of the founder to such persons as he has directed. Of this kind are hospitals for the relief or maintenance of the sick, and for the promotion of learning and piety.

Civil corporations are erected, some for the advancement and regulation of manufactures and commerce, such as the guilds or companies of London; some for the advancement and improvement of any particular science, such as the College of Physicians, the Royal Society, and such like; some again, for the good government of a city, town or particular district, such as the mayor, aldermen, and burgesses of a borough, and these last are termed municipal corporations. (*See* 1 Bl. Com. *ut supra*, and authorities there cited.)

A municipal corporation, therefore, is a civil corporation aggregate, established for the purpose of investing the inhabitants of a particular borough or place with the power of self-government, and with certain other privileges and franchises.

CHAPTER II.

Of the Corporate Seal; and herein of Corporate Acts, that must be done by Deed.

Of the corporate seal and acts.

Another incident of a corporation is the having and using a common seal, by which the body corporate is considered to express their aggregate intention, as they cannot do so by any personal act or oral discourse. The individual members, indeed, may manifest their private assent to any act by words, or by signing their names, but that will not bind the corporation; it is only the affixing of the seal which unites the several assents of the individuals who compose the community, and makes one joint assent of the whole. (Dav. Rep. 44, 48.)

It is not necessary that there should be any clause in the charter of incorporation empowering them to use a seal; as it is a necessary incident to the existence of a corporation that it should have one, and as soon as the corporation is established the body may make and use what seal they will. (*Sutton's Hospital* (*Case of*), 10 Rep. 30.)

It is laid down that a corporation may do acts upon record without their common seal, but not acts *in pais* (*Thetford* (*Mayor's*) *Case*, 1 Salk. 192, S. C., Holt, 171); that is to say, that although in all matters which are not of record, any act, in order to bind the corporate body, must be witnessed by the affixing of their common seal, yet a corporation will be bound by any admission made upon record, as in the pleadings in the course of a cause, although such admission is not under their seal.

Generally speaking, when the corporate seal appears affixed to a document it will be presumed to have been regularly so affixed; and the party who impugns its legality has the burden cast upon him of showing in what manner the annexation was illegal or irregular. (*See* Skinn. 2.)

Where the corporate seal has been affixed to an instrument without the authority of the corporate body, it is invalid, and may be repudiated by them. (*Anon.*, 12 Mod. 423.)

The due affixing of the corporate seal is sufficient to give validity to an instrument without a formal delivery. (*See* 1 Ventr. 257; 1 Lev. 46; Carth. 160.) But where the corporate seal was regularly attached to a conveyance, but at the same time the clerk of the corporation was ordered to retain the conveyance in his hands until some accounts were settled with the purchasers, it was held that the conveyance did not pass the estate. (*Derby Canal Company* v. *Wilmot*, 9 Ea. 360. *See* also *Hill* v. *Manchester Waterworks Company*, 5 B. & Ad. 866; *Clarke* v. *Imperial Gas Company*, 4 B. & Ad. 315.)

It appears that if a regular corporate resolution has been passed for granting an interest in the corporate property, and upon the faith of it expenditure has been incurred, the Court of Chancery will compel the corporation to make a legal grant in pursuance of the resolution, although it is not under the corporate seal. (*Marshall* v. *Queenborough*, 1 Sim. & St. 520.)

The annexation of the corporate seal being necessary for the purpose of expressing the assent by the corporate body to any act or thing, it follows that any corporate act, or at least any act of importance, must be by deed. (Bro. Ab. *Corporation*, 63; Y. B. 21 E. 4. 13.)

Thus a corporation could not, even before the statute of frauds, grant or surrender a lease without deed (Plowd. 150); yet they may make such surrender by operation of law, as by accepting a new lease. (*See* 10 Rep. 67.)

So, the appointment of a person to do any act which concerns the real property of the corporation, or by which their rights are to be asserted, must be by deed (Bro. Ab. *Corporation*, 54, 56; Y. B. 7 E. 4. 14; 12 H. 7, 25, 26; 16 H. 7. 2; 13 H. 8. 12); such, for example, as the appointment of an attorney to make or to take livery of seisin (Bro. Ab. *Corporation*, 51), or to conduct (*Arnold* v.

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Poole (*Mayor, &c.*), 4 M. & G. 860) or appear in a suit (*see* Plowd. 91), or to manage the affairs of the corporation (*Arnold* v. *Poole* (*Mayor, &c.*), 4 M. & G. 860); and an attorney not appointed under seal cannot recover for business done, although the council of the borough had passed a resolution directing that the business should be done by him, and was cognizant of its progress. (*Arnold* v. *Poole* (*Mayor, &c.*), 4 M. & G. 860.)

So an agreement not under seal by a corporation with one of its officers, for an increase of the salary of an office retained by him, as a compensation for the loss of another office of which he was deprived under the Municipal Corporation Act, though upon an executed consideration, is not binding upon the corporation. (*R.* v. *Stamford* (*Mayor, &c.*), 6 Q. B. 433.)

But an attorney to a corporation may be appointed in a court of record, without any other writing than the record itself, because the corporation would be estopped by the record from repudiating their own acts. (*See* 1 Salk. 192, and *Arnold* v. *Poole* (*Mayor, &c.*), *ut supra.*)

A corporation may prove a debt in bankruptcy, by an affidavit of a person authorized by a general power of attorney, and they may vote in the choice of assignees by a person authorized thereto by a special power of attorney, such powers of attorney being under the corporate seal. (*Bank of England* (*Ex parte*), 1 Swanst. 10.)

A presentation of a clerk to a living by a corporation must be by deed. (Bro. Ab. *Corporation*, 83.)

A corporation cannot command their bailiff to enter into land of their own leasing for years, for a condition broken, without deed. (1 Ro. Ab. 514. And *see* Dy. 102, pl. 83.) Nor can they, without deed, appoint a person to seize goods as forfeited to their use. (*Horne* v. *Ivy*, 1 Vent. 47; S. C. 1 Mod. 18; Cit. 3 P. Wms. 424.)

Generally speaking, the appointment of all subordinate corporate officers, such as bailiffs (see *Vavasor's Case*, Moo. 552), &c., must be by deed; but when once appointed, they may perform any act incident to the

nature of their office, without any special commandment by deed or otherwise. (Y. B. 4 H. 7, 6, 13, 17; 7 H. 7. 9.)

So in a case where, in pursuance of a resolution passed at a meeting of a sub-committee appointed for the management of the business, and whose report was adopted by the council, the plaintiff was employed as a witness on an arbitration to support the evidence of the defendants' valuer; and where no appointment of the plaintiff under seal was made; but he acted as a witness under the instructions of the valuer who was so appointed; it was held that in an action brought by the plaintiff against the corporation for his services as witness he could recover. (*Andrews* v. *The Mayor, &c., of Ryde*, L. R. 9 Ex. 302.)

In a recent case (decided in Queen's Bench Division, 5th May, 1882) it was held that a council may apply their funds to pay a just debt, although the contract was not under seal. (*The Queen* v. *The Mayor, &c., of Norwich*,)

When a council is acting as an urban sanitary authority there must be a strict compliance with the provisions of the Public Health Act, 1875. (*Eaton* v. *Baskers and Others and the Mayor of Grantham*, 44 L. T. (N.S.) 703.)

And an appointment by deed is not necessary in cases where the acts to be performed are of daily occurrence, and too insignificant to be worth the trouble of affixing the common seal, such as the employment of a butler.

The defendants, a municipal corporation, were possessed of a dock, of which they allowed the use to ships needing repairs, under certain printed regulations. The plaintiff entered into a parol agreement for the use of the dock upon the terms of such regulations. It was held that the contract need not be under the seal of the corporation.

The plaintiff supplied coal to the defendants, the guardians of a poor law union, under an agreement not under seal. The defendants received and used some of the coal. It was held, that as the goods had been supplied and accepted, and were such as must necessarily be supplied

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for the very purposes for which the defendants were incorporated, the defendants were liable, although the contract was not under seal. (*Wells* v. *Mayor, &c. of Kingston-upon-Hull*, L. R. 10, C. P. 402; *Clarke* v. *Cuckfield Union*, 21 L. J. (Q. B.) 349; *Nicholson* v. *Bradfield Union*, L. R. 1 Q. B. 620.

So, where the act to be done requires to be executed immediately; as where cattle are to be distrained damage feasant, which might escape before the formality of executing a deed could be gone through (*Manby* v. *Long*, 3 Lev. 107); in such a case the verbal authority of the mayor would be sufficient. (*Randall* v. *Deane*, 2 Lutw. 1497.)

It is said that it is only in cases of necessity, occasioned by the hurry of the proceedings, that such a course can be pursued (see *East London Waterworks Company* v. *Bailey*, 4 Bing. 287); yet it has been decided that a corporation may appoint a bailiff to distrain without deed, because the distress vests no interest in them. (*Carey* v. *Matthews*, 1 Salk. 191, 467.)

It has been seen that a corporation cannot grant a lease without deed; nor can they make any contract except under seal. (See *Fishmongers' Company* v. *Robertson*, 5 M. & G. 131; 6 Scott, N. R. 56; *Campbell* v. *Billericay Union*, 18 L. J. (N.S.) Exch. 282; *Cope* v. *Thames Haven Company*, Ib. 345.) Thus they cannot enter into a contract to pay a sum of money out of the corporate funds, for making improvements within the borough, except under the common seal (*Ludlow* (*Mayor, &c.*) v. *Charlton*, 6 M. & W. 815); and it seems doubtful whether they can borrow money except under seal. (*Wilmot* v. *Coventry* (*Corp.*), 1 You. & C. 518.)

But though a contract put in suit by a corporation is on their part executory only, and not executed, there seems little doubt that their suing on the contract would amount to an admission on record by them that such contract was duly entered into on their part so as to bind themselves, and that such admission on the record would stop them from setting up as an objection in a cross

action, that it was not sealed with their common seal. (Per TINDAL, C. J., in *Fishmongers' Company* v. *Robertson*, *ut supra*.)

Where a contract has been executed—that is where the person who is a party to the contract has received the benefit of the consideration moving from the corporation (*per* TINDAL, C. J., in *The Fishmongers' Company* v. *Robertson*, 5 M. & G. 131; 6 Scott, N. R. 56)—the law will imply a promise, and a deed under seal is not necessary; they may, therefore, sue a party in *assumpsit* for the use and occupation of lands belonging to them. (*Stafford* (*Mayor, &c.*) v. *Till*, 4 Bing. 75; *see* also *Doe d. Parmington* v. *Taniere*, 18 L. J. (N.S.) Q. B. 49.)

So, where the mayor of a borough had ordered weights and measures, and when supplied, they were examined at a full meeting of the corporation, this was held to be such a recognition of the contract as would make the corporation liable to pay for them, although there was no order for them under the common seal; and that the fact of the mayor having been afterwards ousted from office by a judgment of the Court of King's Bench made no difference. (*De Grave* v. *Monmouth*, C. & P. 111; *see* also *Sanders* v. *St. Neot's Union*, 8 Q. B. 812.)

So, where an indenture was entered into between A. B. and C. bailiffs, and D. E. and F. aldermen, with the assent of the burgesses of the borough of M. of the one part, and J. S. of the other part, whereby the said bailiffs, aldermen and burgesses demised lands to J. S. for years, to be holden of the said bailiffs, aldermen and burgesses, and the deed was executed by A. B. and C. and D. E. and F., but not sealed with the corporation seal; and J. S. had paid rent to the bailiffs, as the chief officers of the borough; it was held that their servant might make cognizance for taking a distress under a demise by the corporation, notwithstanding a notice had been given by the aldermen (one of whom was a party to the indenture) to pay the rent to them; for the payment of rent to the bailiffs admitted a tenancy from year to year under the corporation. (*Wood* v. *Tate*, 2 N. R. 247.)

CHAPTER III.

Of the power to make Bye-Laws.

Power to make bye-laws.

Bye-laws which concern the good rule and government of the borough or the suppression and prevention of nuisances, must be made under the provisions of the Consolidation Act (sect. 23).

The power to make bye-laws is an incident to a corporation which is included by law in the very act of incorporation (*see* Hob. 211); and these laws are binding upon the members, unless they are inconsistent with, or contrary to, the common or statute law or the provisions of the charter of incorporation. (*R.* v. *Cutbush*, 4 Burr. 2204; *Hoblyn* v. *Regem*, 2 Bro. P. C. 329; *R.* v. *Cambridge*, 2 Selw. R. P. 1144.)

Where the power of making bye-laws is in the body at large, they might, at common law, delegate their right to a select body, who thus become the representatives of the whole community. (*R.* v. *Spencer*, 3 Burr. 1837.) If, however, the charter gave to a select body a power to make bye-laws touching certain matters therein specified, that did not take away from the body at large their incidental power to make bye-laws touching other matters not specified in the charter. (*R.* v. *Westwood*, 2 Dow. & Cl. 21; 4 Bligh (N.S.), 213; 7 Bing. 1; 4 B. & C. 781.)

Bye-laws may be made generally for the regulation of the internal affairs of a corporation; the conduct of its members; the reasonable exercise of a right, or the mode by which a person is to be admitted thereto, where he has an inchoate title; but they cannot take away a right, or impose any unreasonable restraint in the exercise thereof.

The following may be mentioned as instances in which a bye-law has been held valid.

In the city of York, which was incorporated before the time of legal memory, there had been a court from very ancient times, held first before the mayor and bailiffs, and

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after a charter of Rich. 2, before the mayor and sheriffs. By a bye-law made in 3 & 4 Phil. and Mary, by a select body of the corporation, who had immemorially made rules and regulations as to the practice of the court, and who had at their discretion selected the persons admitted to practise as attorneys there, it was ordered, that thenceforth there should be no more than four persons admitted to be attorneys of the sheriff's court; and from that time it did not appear that any more than that number had ever been allowed to practise: it was held that the bye-law was reasonable, and that the usage limiting the number of attorneys to four was sufficiently ancient to satisfy the statute 2 Geo. 2, c. 23, s. 11. (*R.* v. *York*, 3 B. & Ad. 770.)

In the year 1762 an Act of parliament passed for dividing and enclosing two pieces of open land in the borough of S., over which the corporation of that borough had immemorially exercised the sole right of pasturage, and enacted that they should be divided between and allotted to the lord of the manor and the corporation in certain shares; and that the corporation should have power from time to time to make leases of the allotments so vested in them, for such terms, and with such covenants and agreements as the burgesses in common-hall assembled should think proper. On the 1st of April, in the same year, the burgesses made a "rule, order, and ordinance," whereby, after reciting that they were of opinion that the most beneficial mode for the corporation of enclosing the lands would be to grant leases of them for long terms to such burgesses as were willing to take the same, under covenants to enclose them, it was ordered that no lease should be made to one burgess in the same lease of more than fifty, or less than five acres; "and it being their desire and opinion, that every burgess residing within the borough should receive a benefit from the said inclosure," it was further ordered that certain annual sums out of the rents arising from the inclosure, should be paid and distributed yearly, on every 2nd November, among the twelve senior burgesses residing within the

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borough, and that no burgess who should take a lease should be entitled to receive any of such money. It was held that this ordinance was a valid bye-law. (*Hopkins* v. *Swansea* (*Mayor, &c.*), 4 M. & W. 621. S. C. in error, 8 M. & W. 901.)

There also exist in some boroughs certain customs, which may be presumed to have originated in bye-laws, as they can only exist in prescriptive corporations (see *Vaughan* v. *Lewis*, Carth. 228; *Bolton* v. *Throgmorton*, Skin. 55); such customs are not, however, in general much favoured, and the courts require them to be incontrovertibly proved. (See *Wilson* v. *Wilks*, 2 Ld. Raym. 1133; *York* v. *Welbank*, 4 B. & A. 440.)

Before the passing of the Municipal Corporation Act, bye-laws in restraint of trade were considered bad, unless they were supported by a custom in the borough, when they would be upheld. (See *Hesketh* v. *Braddock*, 3 Burr. 1847; *Butchers' Company* v. *Morey*, 1 H. Bl. 370; *Wooley* v. *Idle*, 4 Burr. 1951; *London* v. *Compton*, 7 D. & R. 597; *R.* v. *Harrison*, 3 Burr. 1322; *Shaw* v. *Poynter*, 2 A. & E. 312; *Jones* v. *Waters*, 1 C. M. & R. 713; *Clark* v. *Denton*, 1 B. & Ad. 92; *Clark* v. *Le Cren*, 9 B. & C. 52; *Leicester* v. *Burgess*, 2 N. & M. 131; *Perkins* v. *Cutlers' Company*, 1 Selw. N. P. 1145.) But a bye-law to support a custom, giving a penalty to any but the corporation, has been held bad. (*Totterdell* v. *Glazeby*, 2 Wills. 266.) So also has a bye-law to oblige a person who had a right to be free of a city to take up his freedom in some particular company. (*Harrison* v. *Godman*, 1 Burr. 12.) So a bye-law founded on a custom to include foreigners, and authorizing a distress for a penalty in case of a breach of the bye-law, without a previous demand or refusal of such penalty. (*Davis* v. *Morgan*, 1 C. & J. 587.)

And now all bye-laws and customs prohibiting persons other than freemen, &c., from carrying on trade within a borough, are abolished by the Municipal Corporations Act, 1882. (45 & 46 Vict. c. 50, s. 247.)

A corporation, however, may regulate the manner of carrying on a trade within the borough, so far as to pre-

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vent monopoly or the sale of unfit commodities, or to insure the proper conduct of those who trade within the borough (see *Freemantle* v. *Silk-Throwsters' Company*, 1 Lev. 229, S. C., 1 Keb. 309. *See* also *Everett* v. *Grapes*, 3 L. T. (N.S.) 669), or to protect the safety or health of the public.

Upon this principle, a bye-law to prohibit gunpowder from remaining within a harbour for more than twenty-four hours, has been held good (*Trinity House* v. *Crisp*, 2 Show. 95); so a bye-law has been upheld which prohibited the slaughter of any animal within the walls of a city. (*Pierce* v. *Bartrum*, Cowp. 469; *see* further *Shaw* v. *Pope*, 2 B. & Ad. 465.)

It has been seen that a bye-law cannot be made to take away an existing right, such as that of a freeman: or to incur a forfeiture of goods, unless such power is expressly given. (*Kirk* v. *Nowill*, 1 T. R. 118; *see* also 8 Rep. 125; 1 Wils. 63.) But a corporation may make bye-laws for the amotion of an officer for just cause. (*R.* v. *Richardson*, 1 Burr. 517; 3 Ld. Ken. 85.)

The proper causes of amotion will be considered hereafter.

It has been laid down as a general rule that any bye-law that is unreasonable, or unjust, or uncertain, is bad. (See *Bosworth* v. *Hearne*, 2 Str. 1085, S. C. Andr. 93; *Mitchell* v. *Reynolds*, 10 Mod. 133; *Carter* v. *Sanderson*, 5 Bing. 79; *Framework Knitters* v. *Green*, 1 Ld. Ray, 112.)

Thus a bye-law that if *any person* should be elected to a certain office in the corporation, and should refuse to undertake the office, he should be subject to a certain fine, has been held bad (*Oxford* (*Mayor, &c.*) v. *Wildgoose*, 3 Lev. 293); as such a bye-law would extend to persons who were not members of the corporation.

So a bye-law inflicting imprisonment as a penalty is invalid. (*Hutchins* v. *Player*, Moore, 411.)

But a bye-law imposing a penalty of £5 to the use of the corporation, "or less at the discretion and pleasure of the corporation," is not bad for uncertainty in the amount of the penalty. (*Piper* v. *Chappell*, 14 M. & W. 622.)

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A bye-law which provided that no person should erect any booth, or place any caravan, for the purpose of any show or public entertainment in any public place within the borough, without the license of the mayor, and that any such license given at any other time than fair time should be revoked by the mayor, if three inhabitant householders, residing within 300 yards of the place for which it was granted should memorialise the mayor to revoke it, was held to be unreasonable and bad. (*Elwood* v. *Bullock*, 6 Q. B. 383; 13 L. J. (N.S.) Q. B. 330.)

A bye-law may be good in part and bad in part; but that can only be so where the two parts are entire and distinct from each other (by Ld. KENYON, C. J., in *R.* v. *Faversham* (*Company of Fishermen*), 8 T. R. 356); thus, if a bye-law consists of several distinct and independent provisions, although one or more of these may be void, yet the rest of the bye-law may be valid. (*Lee* v. *Wallis*, 1 Ken. 295.)

But if a bye-law be entire, and one part be void, it is void altogether. Thus if a bye-law, instead of being limited to those within the jurisdiction of the corporation, professes to extend to strangers also, it is void not only as to the latter, but also as to the members of the corporation. (*Dodwell* v. *Oxford* (*University*), 2 Vent. 34.)

Any existing bye-law may be repealed by the corporate body. (*R.* v. *Ashwell*, 12 Ea. 22; *R.* v. *Westwood*, 4 B. & C. 806.)

It has been decided that a bye-law cannot be objected to in a summary way upon motion, on return to a *habeas corpus*, except in cases from London. (*Bellard* v. *Bennett;* Same v. *Clement*, 2 Burr. 775.) But the validity of a bye-law may be tested in an action to recover a penalty, where that is the proper mode of proceeding (*Piper* v. *Chappell*, 14 M. & W. 624); or where a penalty has been enforced by distress, by an action of trespass (*Moir* v. *Munday*, Sayer, 181, 185), or in proceedings to enforce a penalty before justices. (*Everett* v. *Grapes*, 3 L. T. (N.S.) 669.)

Evidence of a practice in contravention of a bye-law is not receivable. (*Sells* v. *Brown*, 9 C. & P. 601.)

CHAPTER IV.

Of Actions by or against a Corporation.

Actions by or against a corporation.

Another incident to corporations is the power of suing and being used by their corporate name.

They may maintain all such actions as are necessary to assert or maintain their rights, and all such actions may be maintained against them for the support of adverse claims.

As a corporation cannot appear in person, they must appear by attorney. (Bro. Abr. *Corporation.* 28 Co. Lit. 66, b.; *Sutton's Hospital, Case of,* 10 Rep. 30, b.)

If a corporation has a head or any other integral component part, they cannot sue or be sued without it, as in that case the corporation would be incomplete. (Bro. Abr. *Corporation.* 43 Co. Lit. 66, b.)

A foreign corporation may sue as such in the courts of this country, but they must prove they are incorporated in the foreign country. (*St. Charles Bank* v. *De Bannales,* 1 C. & P. 569; *S. C.* 1 Ry. & Moo. 190.)

As all contracts entered into by a corporation must be under seal, it follows that a corporation cannot sue in *assumpsit* on an executory contract (see *East London Water Works Co.* v. *Bailey,* 4 Bing. 283), as such an action is founded on a contract not under seal. (As to trading corporations, see *Church* v. *Imperial Gas Co.,* 6 A. & E. 846; 3 N. & P. 37; *Dunstable* v. *Imperial Gas Co.,* 3 B. & Ad. 125; *London* (*City*) *Gas Co.* v. *Nicholls,* 2 C. & P. 365; *East India Co.* v. *Glover,* 1 Stra. 612; *Gibson* v. *East India Co.,* 5 Bing. N. C. 270.)

But they may maintain *assumpsit* upon an executed contract (see *The Barber Surgeons of London* v. *Pilson,* 2 Lev. 252; *Rochester* (*Dean and Chapter*) v. *Pearce,* 1 Camp. 466); as for the use and occupation of land (*Stafford* (*Mayor, &c.*) v. *Till,* 4 Bing. 75), or of tolls. (*Carmarthen* (*Mayor, &c.*) v. *Lewis,* 6 C. & P. 608.) As

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in such cases the party contracting with the corporation having had the benefit of the fulfilment of the contract, the law will raise an implied promise in favour of the corporation on which they may sue in their corporate character (*see* further *Beverley* v. *Lincoln Gas Co.*, 6 A. & E. 839; 2 N. & P. 283); and it is no action of *assumpsit* by the corporation, that the corporation itself was not originally bound by the contract, by reason of its not having been made under their common seal.

A plea, therefore, to an action by a corporation on an agreement which had been executed, that the plaintiffs were a corporation aggregate, and that the agreement was not entered into by them under the common seal of the corporation, or by any person authorized under seal, is bad on demurrer. (*London* (*City*) v. *Goree*, 1 Ventr. 298. *See* also *Exeter* (*Mayor, &c.*) v. *Trimlet*, 2 Wils. 95; *Yarmouth* (*Mayor, &c.*) v. *Eaton*, 3 Burr. 1402; *Kingston-upon-Hull* (*Mayor, &c.*) v. *Horne*, Cowp. 102.)

It seems also, that even if the contract had been executory only on the part of the corporation, their suing upon it might amount to an admission on record by them, that such contract was duly entered into on their part, so as to be obligatory upon themselves; and that such admission on the record would stop them from setting up an objection in a cross action, that the contract was not sealed with their common seal. (*Fishmongers' Co.* v. *Robertson*, 5 M. & G. 131; 6 Scott, N. R. 56. *See* also *Liverpool Borough Bank* v. *Eccles*, 4 H. & N. 139.)

Assumpsit will also lie for duties leviable within the jurisdiction of the corporation, such as the duty of scavage, due by the custom of London. (*Fishmongers' Co.* v. *Robertson*, 5 M. & G. 131; 6 Scott, N. R. 56. *See* also *Liverpool Borough Bank* v. *Eccles*, 4 H. & N. 139.)

Debt also will lie for such duties (*see* Hardres, 486, and the cases cited above), or for penalties incurred by breaches of the bye laws of the corporation. (See *Butchers' Co.* v. *Bullock*, 3 B. & P. 434; *Feltmakers' Co.* v. *Davis*, 4 B. &. P. 98.)

So *debt* will lie upon a bond given to the corporation; but a corporation cannot sue upon a bond made to the mayor in his own proper name. (Y. B. 21 E. 4, 15; Dy. 48.)

On the other hand, the mayor of a corporation, who on the sale of certain corporate lands by auction, signed a contract on behalf of himself and the corporation with the purchaser, for the due performance of the conditions of sale, cannot, in his individual capacity, sue the purchaser for a breach of the contract. (2 Taunt. 374, 387.)

A corporation may maintain *trespass* for a trespass committed upon their lands or other possessions; or *case*, as for disturbance in holding their courts, or taking the profits of liberties granted to the corporation, or against the sheriff of the county for executing process within the jurisdiction of the corporation, where the return of writs has been granted to them. (1 Rol. Rep. 118.)

They may also maintain *trover*, or *ejectment*. (*See* 1 Anderson, 202, 248.)

In *ejectment* by a corporation, it is not necessary that the demise should be stated to be by deed; and if so stated, it need not be proved. (2 Wms. Saund. 305 b. n. (*c*)).

A corporation may institute a *suit in equity* for setting aside transactions fraudulent as against it, although carried into effect in its name by members of the governing body: and such right is not affected by the attorney-general having also power to call in question such transaction. (*Attorney-General* v. *Wilson*, 1 Craig. & Phil. 1.)

A suit or action by a corporation does not abate by the death of one of the members (*Blackburn* v. *Jepson*, 3 Swans. 138); for the body still remains a corporation.

A *criminal prosecution* will also lie at the instance of a corporation; but they should be described in the indict-

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ment by their corporate name. (*R.* v. *Patrick*, 1 Leach C. C. 253; S. C. 2, Ea. P. C. 1059.)

In the case of an action *against* a corporation, it has been enacted, that the writ of summons may be served on the mayor or other head officer, or on the town clerk, or secretary, or treasurer of such corporation. (C. L. P. Act, 1852, s. 16.)

But this enactment does not apply to actions of *ejectment* or *quare impedit*, which may still be commenced by original writ. (As to process against a corporation by original writ, *see* Com. Dig. *Franchises*, F. 16.)

If a corporation does not enter an appearance to the writ of summons or original process, the proper proceeding is by *distringas*, which should go against them in their public character; and under this process the sheriff is authorized to distrain the lands and goods belonging to the corporation.

If a party has sustained injury by the act of others who he has reason to suppose acted under the authority of a corporation, and he is unable to ascertain that fact, he may file a bill of discovery in equity against them and any of their officers, before he brings an action at law, suggesting that he intends to bring one, but cannot do so without the discovery prayed. If, however, the discovery of any of the matters prayed for should be prejudicial to the corporation, and would not be material to the plaintiff's case, the defendants are not bound to reveal such facts. (*Mordelly* v. *Merton*, 1 Br. Ch. Rep. 471.)

An answer in equity must be made under the corporate seal; and if the proper officer refuses to affix the seal, where the majority of the members have agreed to the answer, the Court of Queen's Bench will compel him to do so. (*R.* v. *Wyndham*, Cowp. 317. See *Diggle* v. *London and Blackwall Railway Company*, 5 Exch. 442, 450, as to where it is inconvenient or impossible to affix the seal.)

A municipal corporation, as altered by the Municipal Corporation Act, being but a continuance of the old cor-

poration, where a new corporation is made party to a suit in equity in respect of a breach of trust committed by their predecessors, they are not entitled to costs. (*Attorney-General* v. *Kerr*, 2 Beav. 420.)

Assumpsit will not lie against a municipal corporation upon an executory contract for the reasons previously stated (*supra*, p. 15. *See* also, 1 Rol. R. 82), but for the same reasons it will lie in the case of an executed consideration; as to recover money wrongfully received by them. (*Hall* v. *Swansea* (*Mayor, &c.*), 5 Q. B. 526.)

Where an attorney had acted for a corporation, sometimes having been retained under their corporate seal, and at other times without that authority; and the corporation had paid him a sum of money in part payment of his bills generally, it was held in an action brought by him against the corporation for the residue, that he was at liberty to appropriate the money so paid to him to that portion of his work which he had performed without a retainer under seal, as there was nothing to impeach the fairness of his bills or the amount due to him in this respect, although, from want of legal form, he might not have been able to sue upon them. (*Arnold* v. *Poole* (*Mayor, &c.*), 4 M. & G. 860; 5 Scott, N. R. 741.) But a mere resolution of the council, for the increase of salary of a corporate officer though duly entered on the corporation books, is not binding on the corporation, not having been made under the common seal. (*R.* v. *Stamford* (*Mayor, &c.*), 6 Q. B. 433.)

Debt will lie against a corporation, upon any contract entered into by them under the corporate seal.

By a bye-law, certain corporate lands which had been inclosed by Act of parliament, were ordered to be let to such of the burgesses as were willing to take them: and it was further ordered, that certain annual sums out of the rents arising from the inclosure should be paid and distributed yearly among the twelve senior burgesses re-

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siding within the borough. It was decided (*Hopkins* v. *Swansea* (*Mayor, &c.*), 4 M. & W. 621; S. C. in error, 8 M. & W. 901) that an action of *debt* was maintainable on this bye-law at common law by the parties to whom pecuniary benefits were granted thereby; and that such action lay against the corporation at large, under the 2nd section of the Municipal Corporation Act, now repealed.

A corporation aggregate is, generally speaking, not liable to be sued in tort, for any tortious act of their own; thus *trespass,* or *replevin,* or *trover* will not lie against them for such an act (*see* 8 Ea. 229, and cases there cited), but they are liable to be so sued for the tortious act of their agent, though not appointed under seal, if such an act be an ordinary service, such as a distress, professedly made under a statute, for a debt due to the corporation; and a jury may infer the agency from the adoption of the act by the corporation, as from their having received the proceeds of the seizure. (*Smith* v. *Birmingham Gas Company,* 1 A. & E. 526. *See* also *Maund* v. *Monmouth Canal Company,* 4 M. & G. 452; 5 Scott, N. R. 457. *Green* v. *London General Omnibus Company,* 29 L. J.; C. P. 13.)

So *trover* will lie against a corporation for a tortious conversion by their agent; and, if it should be essential to the conversion that they should have authorized it under seal, such authority will be presumed after verdict. (*Yarborough* v. *Bank of England,* 16 Ea. 6. *See* also *Duncan* v. *Surrey Canal Proprietors,* 3 Stark. R. 50.)

It seems doubtful whether *ejectment* can be maintained against a corporation. If they are tenants to any party, such tenancy may be determined by a notice to them to quit, served on their officers: after which the owner of the premises may distrain the cattle of any persons found trespassing on his grounds, or he may bring his action against them, or he may maintain ejectment against any person in the actual possession of the premises. (*Doe d. Carlisle* (*Earl*) v. *Woodman,* 8 Ea. 228.)

Formerly, a corporation would not be let in to defend an ejectment, without entering into the usual consent rule to confess themselves in possession: the object of that rule being merely to prevent the necessity of proving the identity of the premises at the trial. (*Doe d. Parr* v. *Roe*, 1 Q. B. 700.)

Ejectment cannot be maintained against the bailiffs, *pro tempore*, of a corporation, by merely proving payment of rent for the premises by the annual predecessors of the defendants in the same office for several years before, and service of the notice to quit on the defendants, the existing bailiffs; for the payment of such rent by the bailiffs in succession is merely evidence of a tenancy in the corporation. (*Doe d. Parr* v. *Roe*, 1 Q. B. 700.)

An action on the *case* also may be supported against a corporation by any individual who may have sustained a direct and particular damage by reason of the neglect of any public duties which by law may be thrown upon them, such as for the non-repair of highways, bridges, or gaols. (*Lyme Regis* (*Mayor, &c.*) v. *Henley*, 3 B. & Ad. 77; S. C. Bing. 91; *Lynn* v. *Turner*, Cowp. 86.)

They may also become liable in damages for the improper and careless construction, and management of dangerous premises or machinery (*Cowley* v. *Sunderland* (*Mayor, &c.*), 3 L. J. Exch. 127); or for an assault and battery or false imprisonment committed by their servants in the exercise of the orders of the corporation, or in the discharge of their ordinary duty; or for the negligence and unskilfulness of their servants in the execution of the ordinary work and business of the corporation (*Scott* v. *Manchester* (*Mayor, &c.*), 1 H. & N. 59; 2 H. & N. 204), without proof of any authority under seal. (*Eastern Counties Railway Company* v. *Broom*, 6 Exch. 314. *See* also *Goff* v. *Great Northern Railway Company*, 30 L. J. Q. B. 148; *Chilton* v. *London and Croydon Railway Company*, 16 M. & W. 231; *Tollemache* v. *London and South Western Railway Company*, 26 L. T. R. 222.) But it is otherwise where the servant is not acting under orders nor within the general scope of his authority. (See *Poulton*

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v. *London and South Western Railway Company,* L. R. 2 Q. B. 534.) And a corporation, who have employed a solicitor to conduct legal proceedings, are not necessarily liable for unlawful acts of which the solicitor may have been guilty in the conduct of the proceedings (*Eggington* v. *Lichfield* (*Mayor, &c.*), 5 El. & B. 112), or for a misfeasance, thus an indictment will lie against an incorporated railway company for obstructing a highway by their works. (*R.* v. *Great North of England Railway Company, ut supra.*) In such cases an indictment is maintainable against the corporation, in its corporate name. (See *Dogherty's Crown Circ. Comp.* 398; *see* also *R.* v. *Birmingham and Gloucester Railway Company,* 3 Q. B. 223; S. C. 2 C. & P. 478; *R.* v. *Great North of England Railway Company,* 9 Q. B. 315.)

As to the liability of a corporation for a malicious prosecution, see *Stevens* v. *Midland Counties Railway Company,* 10 Exch. 352; or for a libel, see *Whitfield* v. *South Eastern Railway Company,* El. Bl. & El. 121; 27 L. J. Q. B. 229.

An *indictment* also will lie against a corporation, in the same manner as against the inhabitants of a county or parish, for such neglect of public duties. (See *Dogherty's Crown Circ. Comp.* 398; *see* also *R.* v. *Birmingham and Gloucester Railway Company,* 3 Q. B. 223; S. C. 2 C. & P. 478; *R.* v. *Great North of England Railway Company,* 9 Q. B. 315.)

A *criminal information* also will lie for a breach of duty and trust, as for applying to private purposes the revenues which are vested in them for public uses. (*Limerick* (*Chamberlain, &c.*) v. *Attorney-General,* 6 Dow. 136; *see* also *Drummer* v. *Chippenham* (*Corp.*), 14 Ves. 250.)

It may not be out of place here to remark that the members of the governing body are considered for some purposes as the agents of the corporation: and if they

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exercise their functions for the purpose of injuring its interests and alienating its property, they are personally liable for any loss occasioned thereby. And where such a liability arises from the wrongful act of several parties, each is liable for all the consequences, there being no contribution between them, and each case is distinct, depending upon the evidence against each party. (*Attorney-General* v. *Wilson*, 1 Cr. & Ph. 1.)

Since the 1st November, 1875, all actions at law and suits in chancery commenced by information must be instituted by a proceeding called an action. Every such action must be commenced in the High Court of Justice by writ of summons. The High Court is a superior court of record, to which have been transferred the jurisdictions of the superior courts (*see* Supreme Court of Judicature Acts, 1873 and 1875).

The method of proceeding in *ejectment* is prescribed by the Common Law Procedure Act. The rules, however, annexed to the Judicature Act, 1873, make no special mention of the action of ejectment; and it may be doubtful how far the practice as prescribed by the Common Law Procedure Act will be retained, inasmuch as every action is to commence by a writ of summons (Steph. Com. III. 7th ed. p. 620).

CHAPTER V.

Of the succession of the Members of a Corporation.

Of succession of members of a corporation.

The last incident to be mentioned which is peculiar to a corporation is the perpetual succession of its members, so that however the members may fluctuate, the corporate body never ceases to exist.

The property of the corporation does not belong to the individual members, but to the whole body aggregate, in like manner as we have seen that actions must be brought by and against the whole body, and not by or against any individual members.

CHAPTER VI.

Of the Freemen.

Of freemen.

The Municipal Corporations Act, 1882, includes under the term "freemen" any person of the class whose rights and interests were reserved by the Municipal Corporations Act, 1835.

By the 2nd section of the last-mentioned Act, all rights of property and certain beneficial exemptions are reserved to those persons who at the time of the passing of the Act were freemen or burgesses.

Each borough had its own peculiar customs and bye-laws, regulating the admission of freemen. (See *R.* v. *Marshall,* 2 T. R. 2; *R.* v. *Powell,* 8 T. R. 639; *see* also the *Maldon case,* F. & F. 658.) No usage will avail to alter the positive provisions of a charter (*Helston case,* 2 Doug. 5; *Derby case,* 3 Doug. 287, 304. *See* also *R.* v. *Salway,* 9 B. & C. 424.) The right to freedom generally depended upon either *birth, marriage, servitude, gift,* or *purchase.*

No person can now be admitted a burgess by *gift* or *purchase.* (45 & 46 Vict. c. 50, s. 202.)

It becomes, therefore, unnecessary to consider these two last classes of freemen.

a. Of Freemen by Birth and Marriage.

It will not be necessary either to make many observations on these subjects. A person to be entitled to freedom in respect of birth must be proved to be the legitimate son of a freeman.

The legitimacy, age, and identity of the person claiming the freedom may be shown in the usual way.

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The right to freedom in respect of marriage depends on the local customs of each borough; in some a party is entitled to the freedom who has married the daughter or the widow of a freeman.

The marriage would be proved in the ordinary way.

b. Of Freedom by Servitude.

A person in order to be entitled to his freedom in respect of servitude, must have been bound apprentice to a freeman, and have served as such apprentice for the whole period for which he was so bound.

The requisite period of servitude may vary in different boroughs.

It is necessary that the binding should be by deed, but such deed need not be indented (31 Geo. 2, c. 11); though it is usually termed an *indenture* of apprenticeship.

A service under an agreement to execute an indenture would not be sufficient. (*R.* v. *Stratton,* Burr. Set. Ca. 72.)

The execution of the deed may be shown in the ordinary way. It must be duly stamped (*see* 33 & 34 Vict. c. 97, sched.) and sealed. (*See* Com. Dig. tit. *Fait.*)

The parties to the deed must be competent to contract, but a minor may bind himself even without the joinder of his parent, it being an act for his own benefit; but a father cannot bind his son without the assent of the latter, testified by the execution of the indenture; a service under the indenture is not tantamount to execution. (*Chesterfield's case,* 2 Salk. 479; *R.* v. *Arnesby,* 3 B. & A. 584; *R.* v. *Cromford,* 8 East, 25.)

There must be a continuance of the binding and also of the service, under the deed during the whole period for which the apprentice was bound (*R.* v. *Inman,* 4 B. & A. 57; *R.* v. *Rowe,* 4 Burr. 2287; *R.* v. *St. Paul's, Bedford,* 6 T. R. 452; *R.* v. *E. Bridyford,* Burr. S. C. 133; *R.* v.

Slythe, 6 B. & C. 246. *See* also *R.* v. *Linkinborn*, 3 B. & Ad. 413; *R.* v. *Banbury*, *Id.* 706; *R.* v. *Drimerchion*, *Id.* 120); but if the master were to die or become bankrupt, it seems that a service under an assignment to a third party being a freeman would be sufficient. (See *R.* v. *Stachland*, 1 Doug. 70; *R.* v. *Shepton*, 2 Bott. 295.)

It is necessary that the relation of master and apprentice should exist between the parties; that of master and servant will not be sufficient; there must be a contract to teach on the part of the master, and to learn on that of the apprentice, in order to constitute the former. As to the distinction between servitude as apprentice and as servant, see *R.* v. *Crediton*, 1 B. & Ad. 497; *R.* v. *Tipton*, 9 B. & C. 891; *R.* v. *Edingale*, 10 B. & C. 741. *See* also *R.* v. *Mountsorrell*, 2 M. & S. 460.

If, as in the case of some boroughs, the charter or custom requires the apprenticeship to be with a resident freeman, a binding to a freeman who is only occasionally resident in the town, and where the service is to be performed out of the borough, is not sufficient (*R.* v. *Marshall*, 2 T. R. 2); but it seems that a service at some place out of the borough, if the trade carried on there is subservient to the trade carried on by the master in the borough, is sufficient. (*R.* v. *Cambridge*, 2 Chit. R. 144.)

It has been decided that service under articles of clerkship to an attorney is not a sufficient compliance with a custom requiring service of an apprenticeship to a burgess carrying on *trade* within the borough. (*R.* v. *Doncaster*, 7 B. & C. 630.)

This may be a convenient place to notice some decisions that have taken place with reference to bye-laws relating to the subject of apprenticeship.

A bye-law directing that a sum of money should be paid for the use of a corporation on enrolling indentures of apprenticeship to one of its members has been held to be bad. (*Nevesly* v. *Webster*, 1 Ld. Ken. 243.) So with regard to a bye-law made by a *company* in a corporation to restrain the number of apprentices to be taken by any

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of the members. (*R.* v. *Cooper's Co., of Newcastle-upon-Tyne,* 7 T. R. 543.)

Where by custom a prescriptive right was claimed of making bye-laws to regulate the number of persons to be taken as apprentices by members of a corporation, such custom will not warrant a bye-law altering the qualification of persons to be taken as apprentices. (*R.* v. *Tappenden,* 3 East, 186. See *R.* v. *Bird,* 13 Ea. 267.)

CHAPTER VII.

Of Proceedings by Mandamus.

Proceedings by *mandamus*.

The proceedings by *mandamus* to compel the mayor to insert a name on the burgess roll are regulated by the Municipal Corporations Act, 1882 (sects. 47 and 225). It remains, therefore, to consider proceedings by *mandamus* in other cases.

It is an incident to all corporations that they are liable to be *visited;* that is, that any irregularities which may arise in them from time to time may be inquired into and arrested by some competent authority.

In ecclesiastical corporations, for example, the ordinary is, by the canon law, the visitor. In eleemosynary lay corporations the founder, his heirs or assigns, are, at common law, the visitors. But in civil lay corporations, including municipal corporations, as their existence is derivable from the Crown, the power of visitation is vested therein. (*See* 3 Bl. Com. 480.)

This power of visitation in the Crown, in regard to municipal corporations, was exercised by the Court of Queen's Bench, and will henceforward be so by the Queen's Bench Division of the High Court of Justice, according to the rules of the common law (see *Philips* v. *Bury*, Ld. Raym. 8, by Holt, C. J.; Bac. Abr. tit. *Corporations* (F.)); and it is chiefly exercised by means of the writ of *mandamus,* or of an information in the nature of a *quo warranto.*

A *mandamus* is a high prerogative writ, and is, in form, a command issuing in the Queen's name, directed to any person, or corporation, or inferior court of judicature, within the Crown's dominions, requiring them to do some particular thing therein specified, which appertains to

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their office and duty, and which the Court has previously determined, or at least supposes, to be consonant to right and justice. (3 Bl. Com. 110.)

In its application, it may be considered as generally confined to cases where relief is required in respect of the infringement of some *public* right or duty, and where no effectual relief can be obtained in the ordinary course of an action at law. (*Ib.* And see the cases there cited.)

It would exceed the limits of this work to attempt to mention in detail all the cases in which it has been decided that a *mandamus* may be issued to a corporation. It may be sufficient to mention a few leading examples.

A *mandamus* will lie to compel a corporation to proceed to the election of corporate officers (*see* 45 & 46 Vict. c. 50, s. 70; *R.* v. *London* (*Mayor*), 1 T. R. 146; *R.* v. *Leyland*, 3 M. & S. 184; *R.* v. *Norwich*, 1 B. & Ad. 310); or the admission of a freeman (*Bagg's case*, 11 Rep. 94; Bac. Abr. tit. *Mandamus* (C. 1.) & (D.); or to restore any officer, such as recorder (Style, 452; Vent. 143, 153; 4 Burr. 1999), town-clerk (Noy, 78; Style, 457), or clerk of the peace (4 Mod. 31; Show. 282; 12 Mod. 13), or any member of the corporation who has been turned out, or disfranchised, or suspended. (Bac. Abr. *ut supra;* and (C. 3)).

It will lie also, by statute (45 & 46 Vict. c. 50, s. 47), as has been before stated, to insert the name of a person in the burgess list, whose claim has been rejected, or whose name has been expunged from the list. A party who applies for a *mandamus* under this statute must come prepared to prove his title in all respects; and the court will inquire into the goodness of the whole title and not merely into the points raised before the mayor on the revision. (*R.* v. *Lichfield* (*Mayor, &c.*), 2 Q. B. 693; 2 G. & D. 10.) It will not be sufficient for him to show that his name was improperly expunged by the mayor on a point as to which he had no jurisdiction. (*R.* v. *Harwich* (*Mayor, &c.*), 8 A. & E. 919; 1 P. & D. 134.)

Where the overseers of one of the parishes in a borough had omitted to make out a *burgess list* (under 5 & 6

Will. 4, c. 76, s. 15), so that there was no list before the mayor at the revision court in which the name of a claimant for that parish could be inserted; it was held that as the party had made a claim which had been rejected, the court had power to order his name to be inserted on the burgess roll. (*R.* v. *Lichfield* (*Mayor, &c.*), 1 Q. B. 453; 1 G. & D. 28.)

So where a burgess list was defective, but the mayor had treated it as valid by expunging a name therefrom, the party whose name was expunged was held to be entitled to a *mandamus*, and that the defectiveness of the list was no answer thereto. (*R.* v. *Dover* (*Mayor, &c.*), 11 Q. B. 260.) And so is a person who has been omitted from the burgess list because of his refusal to pay an illegal rate. (*R.* v. *New Windsor* (*Mayor, &c.*), 7 Q. B. 908.)

If the mayor does not show cause against the rule for a *mandamus*, the person on whose objection the name was expunged may do so. (*R.* v. *Exeter* (*Mayor, &c.*), L. R. 4 Q. B. 110, 114.)

The rule should follow the words of the Act: "to insert the name of A. B. upon the burgess roll." (*R.* v. *Exeter* (*Mayor, &c.*), L. R. 4 Q. B. 110, 114.)

In the case of a particular office, if it be already full by the possession of an officer *de facto*, a *mandamus* will not be granted to proceed to a new election until the person in possession has been ousted upon proceedings in *quo warranto*. (*R.* v. *Bankes*, 3 Burr. 1454; *R.* v. *Cambridge*, 4 Burr. 2011; *R.* v. *Radford*, 1 East, 80; *R.* v. *Truro*, 3 B. & A. 592. *See* also *R.* v. *Derby* (*Councillors*), 7 A. & E. 419; *R.* v. *Hiorns*, *Id.* 960. And see the next chapter.)

Thus, where a councillor had, *during his term of office*, been left off the burgess list by the overseers for alleged non-payment of rates, but continued to exercise the office, the court determined that they would not, on affidavit of these facts, issue a *mandamus* to the mayor to proceed to a new election, as the vacancy must be first ascertained by a judgment on a *quo warranto* information. (*R.* v. *Phippen*, 7 A. & E. 966; *see* also *R.* v. *Winchester* (*Mayor, &c.*), 7 A. & E. 215.)

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Where an election has in fact been held, although by an erroneous construction of the Municipal Corporation Act, for one councillor only instead of two, the candidate who was second on the poll cannot have a *mandamus* to admit him to the office; his remedy is either by *mandamus* to hold a new election for a second councillor, or (if the office have been filled in the meantime) by a *quo warranto*. (*R.* v. *Royle*, H. T. 1855. Rawlinson's Corporation Acts, 6th Ed. p. 42, (*n.*) 3.)

But where the name of a councillor has been omitted from the burgess list, another councillor may be elected to supply his place (the proceedings being *bonâ fide*) though the former had not resigned nor been ousted on a *quo warranto;* so held on an application by him for a *mandamus* to restore him to his office. (*R.* v. *Oxford* (*Mayor, &c.*), 6 A. & E. 349.)

A *mandamus* will also lie to compel a corporation to fix their seal to a public document, to hold a court (3 Bl. Com. 110), or a meeting at which public business is to be transacted, such as the granting of corporate leases (Andr. 184; Barnard, 82;) or to a corporate officer, for the production, inspection, or delivery (see *R.* v. *Greene*, 6 A. & E. 549; *R.* v. *Hopkins*, 1 Q. B. 161) of public books and papers (Comb. 102; 2 Stra. 948; 2 Barnard, 235; 1 Bl. Rep. 50. See *R.* v. *Greene; R.* v. *Hopkins, ut supra*); the delivery of the corporate insignia (*Exp. Downton* (*Mayor*), Q. B. 14 J. P. 319), and in like cases.

As to a *mandamus* to the council to pay instalments on a bond given to secure compensation to an officer whose place was abolished by the Municipal Corporation Act (under sect. 67), see *R.* v. *Poole* (*Mayor, &c.*), 1 Q. B. 616; 1 G. & D. 728. *See* also *R.* v. *Kendal*, 1 Q. B. 386.

The time within which the application must be made is generally regulated by the practice of the court.

CHAPTER VIII.

Of Proceedings by Quo Warranto.

Proceedings by *quo warranto.*

A writ of *quo warranto* is in the nature of a writ of right for the Crown, against any one who claims or usurps any office, franchise, or liberty, to inquire *by what warrant,* or authority, he supports his claim, in order to determine the right. (3 Bl. Com. 262.)

The writ being a prerogative writ, and the proceedings thereon being attended with considerable delay, in order to render the remedy more speedy and available in the decision of corporation disputes between party and party, without any intervention of the prerogative, it was enacted by the 9 Anne, c. 20, that an *information,* in the nature of a *quo warranto,* might be brought with leave of the court, at the relation of any person desiring to prosecute the same, who is then styled the *relator,* against any person usurping, intruding into, or unlawfully holding any franchise or office in any borough corporate; and the statute provided for the speedy determination of the information, and directed that if the defendant be convicted, judgment of ouster, as well as fine, might be given against him, and that the relator should pay or receive costs according to the event of the suit. (*See* 3 Bl. Com. 264.)

In the case of a mayor, alderman, councillor, elective auditor, or revising assessor, the application must be made within twelve months after the election, or the disqualification, of the person against whom the application is made. (45 & 46 Vict. c. 50, s. 225.) But even though the application be made within the limited period, the court will not grant it as a matter of right, if it appears there has been an unreasonable delay in making the application. Thus, where a person was enrolled a burgess in November, and an application for a *quo warranto* was made on the last day

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of the following Hilary Term, the court refused a rule, as no explanation was given of the delay. (*R.* v. *Hodson,* 4 Q. B. 648. *See* also *R.* v. *Preece,* 5 Q. B. 94; *R.* v. *Hindmarch,* L. R. 3 Q. B. 12.)

Where the disqualification is a continuous one, as where a party becomes disqualified by reason of his entering into a continuing contract with the corporation, the provisions of the statute do not apply. (*R.* v. *Francis,* 18 Q. B. 526; L. J. Q. B. 304.)

By a rule of court, leave will not be given to file an information in the nature of a *quo warranto,* unless, at the time of moving, an affidavit be produced, by which some person shall depose on oath that such motion is made at his instance, as relator. (Reg. Gen. Q. B. M. T. 3 Vict. 1839, 11 A. & E. 2.) It has been held to be a sufficient compliance with the terms of this rule, if the deponent swears, that he had directed an application to be made to the court for a *quo warranto,* and that the motion would be made at the instance of the deponent as relator (*R.* v. *Anderson,* 2 Q. B. 140); but it will not be sufficient to state that it is the deponent's *intention to become* the relator. (*R.* v. *Hedges,* 11 A. & E. 163.)

It is not necessary that the relator should be a *burgess;* it will be sufficient if he is an *inhabitant* of the borough, and subject to the control and government of the corporation. (See *R.* v. *Hodge,* 2 B. & A. 344; *R.* v. *Parry,* 6 A. & E. 848; *R.* v. *Quayle,* 11 A. & E. 508.) But the court will require that the affidavit should show that the proposed relator is either a burgess or subject to such control. (*R.* v. *Thirlwind,* 33 L. J. Q. B. 171). And it seems if he is not a member of the corporation, the court will require a stronger case to be made out before they will give leave to file the information. (See *R.* v. *Kemp,* 1 T. R. 3 (*n.*); *R.* v. *Ogden,* 10 B. & C. 210.)

When the application is made by *individuals,* and not by the corporation, or their representative the mayor, the court will exercise a large discretion in granting a rule for an information, with reference to all the circumstances of the case, and particularly as to the promptness of the

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application, and the conduct and even the motives of the relator. (See *R.* v. *Marten*, 4 Burr. 2120; *R.* v. *Stacey*, 1 T. R. 3; *R.* v. *Trevenen*, 2 B. & A. 482; *R.* v. *Slythe*, 6 B. & C. 242; *R.* v. *Parry*, 6 A. & E. 810; *R.* v. *St. Mary, Lambeth*, 8 A. & E. 356; *R.* v. *Greene*, 2 Q. B. 460; *R.* v. *Ward*, L. R. 8 Q. B. 210; *R.* v. *Cousens*, *Id.* 216.)

In no case will the court grant an information unless it is made clearly to appear that the office is full *de facto*. It will not be sufficient to state merely that the party "has accepted the office;" but it must be shown in what manner he has done so; as that he has made the requisite declaration (45 & 46 Vict. c. 50, s. 35. See *R.* v. *Slatter*, 11 A. & E. 505. *See* also *R.* v. *Tate*, 4 East, 357); or that he has acted in a corporate capacity (see *R.* v. *Quayle*, 11 A. & E. 508; *R.* v. *Leeds* (*Mayor*), *Id.* 512), or the like.

Still less would it seem to be a ground for such an information, that a party has merely claimed to be a burgess (*R.* v. *Whitwell*, 5 T. R. 85. *See* also *R.* v. *Pepper*, 7 A. & E. 745); or even that he has allowed his name to remain on the roll after notice of objection to his qualification. (*Re Armstrong*, 25 L. J. Q. B. 238.)

Where an office is held during pleasure (*e.g.* that of clerk to the justices) a *quo warranto* will not be granted. (*R.* v. *Fox*, 8 E. & B. 939; 27 L. J. Q. B. 151.)

As a general rule, the title of the electors is not allowed to be questioned in a *quo warranto* impeaching the title of the person elected; though perhaps an exception may be made to this rule in a case where there is no other method of questioning the title of the electors. (*R.* v. *Tugwell*, L. R. 3 Q. B. 704; and see *R.* v. *Main*, 3 T. R. 396; *R.* v. *Harrald*, 7 Q. B. 361; *Symmers* v. *Reg.* Cowp. 489, 507; *R.* v. *Hughes*, 4 B. & C. 368.)

A *quo warranto* may be granted for an usurpation of an office even after the resignation of it; for the resignation is no answer, though it may regulate the decision of the court in imposing the fine. (*R.* v. *Warlow*, 2 M. & S. 75. *See* also *R.* v. *Payne*, 2 Chit. R. 367; *R.* v. *Morton*, 4 Q. B. 146.)

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One ground upon which the court frequently refuses to grant a rule for the information is, that the relator has acquiesced or concurred in the election of the party against whom the application is made (*see* Tancred on *Quo Warranto*, 37, 38); as, *e.g.* by administering the declaration to an officer (under 45 & 46 Vict. c. 50, s. 35; *R.* v. *Greene*, 4 Q. B. 696); but it is no objection that the relator has frequently acted with the party in corporation business, it not appearing that he had actually concurred in the election (*R.* v. *Benney*, 1 B. & Ad. 684); and even where a party is disqualified from being relator by reason of such concurrence, he may nevertheless make an affidavit in support of the application. (*R.* v. *Brame*, 4 A. & E. 664.)

In some cases where collusion is suspected the court will order the relator to give security for costs. (*R.* v. *Wakelin*, 1 B. & Ad. 50. *See* also *R.* v. *Greene*, *ut supra*; *R.* v. *Blizard*, L. R. 3 Q. B. 55.)

The court will not grant leave to file an information against an individual member of a corporation where the object of the application is obviously to call in question the validity of the charter to the corporation. (*R.* v. *Taylor*, 11 A. & E. 954.) Though leave will not be refused merely because the granting it may, or even will, dissolve the corporation. (*R.* v. *White*, 5 A. & E. 613. *See* also per Cur. in *R.* v. *Parry*, 6 A. & E. 820.)

CHAPTER IX.

Of Amotion from a Corporate Office.

Amotion from corporate office.

It will now be considered in what cases a corporate officer can be removed from his office.

The amotion under the Municipal Corporations Act, 1882, will be considered under those sections which relate thereto.

At common law the power of amoving an officer for misconduct is incidental to the corporation at large, and is not confined to the body or person in whom the right of electing or appointing such officer is vested. (*Ld. Bruce's case*, 2 Stra. 819; *R.* v. *Doncaster*, Say, 29; S. C. 2 Ld. Raym. 1566.)

It follows from this rule, that as the powers of the corporate body in any corporation are now vested in the council (45 & 46 Vict, c. 50, s. 10), consisting of the mayor, aldermen, and councillors, the power of amotion is vested in them.

The offences for which a corporate officer may be removed may be divided into three classes:—

First: Such as relate to his corporate or official character, and amount to breaches of the condition expressly or tacitly annexed to the office. (*See* Kyd, Corp. 62.)

Of this nature are the misapplication or embezzlement of the corporate funds; or the not accounting for rents received (see *R.* v. *Chalke*, 1 Ld. Raym. 226; *R.* v. *Doncaster*, Say, 29; 2 Ld. Raym. 1566); non-attendance at several corporate meetings, after proper notice to attend, whereby the business of the corporation has been impeded (*R.* v. *Wells*, 4 Burr. 2004.) Non-residence has also been held to be a sufficient ground: *R.* v. *Doncaster, ut supra*; *R.* v. *Trueboy*, 10 Mod. 75. This is now provided for by the 45 & 46 Vict. c. 50, s. 11. Razing entries from the corporate books, or falsifying them (*R.* v. *Chalke*,

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ut supra); and the like. Habitual drunkenness has been held a good cause for removing an alderman, on account of the evil example to others, and his consequent inefficiency to discharge the duties of a magistrate. *R.* v. *Taylor,* 3 Salk. 231; *Taylor* v. *Gloucester,* 1 Rol. 409. Such a cause is happily not likely to arise at the present day.

Secondly: Such offences as have no relation to his corporate or official character, but are, in themselves, of so infamous a character as to render the offender unfit to enjoy any public franchise. (2 Kyd, Corp. 62.)

Of this nature are perjury, forgery, or bribery. (*R.* v. *Tiverton,* 8 Mod. 186.)

Thirdly: Offences of a mixed nature, being not only against the duty of the officer, but also indictable at common law. (2 Kyd, Corp. 62.)

Thus, the taking part in a riotous assembly and assault upon other corporators, whereby the business of the corporation was impeded, has been held to be a good ground for amotion. (*Haddock's case,* T. Raym. 439; *R.* v. *Derby,* Ca. temp. Hardw. 155.)

In cases falling within the first and third class an amotion may take place, being for a breach of corporate duty, without any previous proceedings being had in a court of law; but in cases within the second class, there must have been a convicton at law before the party can be amoved. (*R.* v. *Richardson,* 1 Burr. 539; *R.* v. *Liverpool,* 2 Burr. 732; *Haddock's case,* T. Raym. 439.)

In order to render the amotion legal the council should be duly convened for the purpose. (See *R.* v. *Sandys,* 2 Barnard, 301; *Taylor* v. *Gloucester,* 1 Rol. 409.)

The party against whom the proceedings are instituted must have notice to appear, which should be served upon him a reasonable time before the meeting. (See *R.* v. *Richardson, ut supra; Ragg's case,* 11 Rep. 99.)

The notice or summons should state the charge upon which it is proposed to amove the party with sufficient particularity (*R.* v. *Chalke,* 1 Lord Raym. 226), but the same technical precision is not required as in an indict-

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ment; thus an allegation that the party "forged, or caused to be forged," a certain document, has been held sufficient, though it would not have been so in an indictment. (*R.* v. *Lyme Regis*, Doug. 174.)

If the party charged does not appear upon a proper summons, or, appearing, remains silent and does not deny the charge, it must be examined and proved, and all the proceedings must be conducted as though he had denied it. An amotion upon the ground that the silence of the party amounted to a confession has been held to be void; though it is not sufficient to enable him to maintain an action against those who amove him, in the absence of proof of malice. (*Harman* v. *Tappenden*, 1 East, 562.) As to what amounts to a removal, see *R.* v. *Thomas*, 8 A. & E. 183.

An amotion, though legal, has not the effect of invalidating any act which the corporator has previously done, or in which he has been concerned; but as soon as he is amoved he ceases *ipso facto* to be a corporator, and another may be elected into the vacant place. If the party who has been amoved continue to act, he is a mere usurper; and all such acts are void, and he may be ousted by a *quo warranto*, and punished for such usurpation; but an amotion from one office does not in general impair the title of a party to another office. (See *Jay's case*, 1 Vent. 302; *Symmers* v. *Regem*, Cowp. 503.)

DIVISION II.

In this division of the work it is proposed to set out the text of the Municipal Corporations Act, 1882.

The Act is preceded by a table referring to the repealed enactments, and showing those substituted therefor. This reference is necessary, as in some cases it may be necessary to look at the repealed enactments.

The Municipal Corporations Act, 1882, is in this division referred to as the Act, and any section is quoted only by the number, and without mentioning the Act.

MUNICIPAL CORPORATIONS ACT, 1882.

[45 & 46 Vict. c. 50.]

Table showing the arrangement of sections, and the former enactments to which they refer.

List of Statutes referred to.

1835—5 & 6 Will. 4, c. 76.
1836B—6 & 7 Will. 4, c. 103.
1836—6 & 7 Will. 4, c. 104.
1836A—6 & 7 Will. 4, c. 105.
1837—7 Will. 4 & 1 Vict. c. 78.
1837A—7 Will. 4 & 1 Vict. c. 81.
1838—1 & 2 Vict. c. 31.
1839—2 & 3 Vict. c. 27.
1839A—2 & 3 Vict. c. 28.
1840—3 & 4 Vict. c. 28.
1842—5 & 6 Vict. c. 104.
1843—6 & 7 Vict. c. 89.
1845—8 & 9 Vict. c. 110.
1850—13 & 14 Vict. c. 42.
1850A—13 & 14 Vict. c. 64.
1850B—13 & 14 Vict. c. 91.
1852—15 & 16 Vict. c. 5.
1853—16 & 17 Vict. c. 79.
1857—20 & 21 Vict. c. 50.
1859—22 Vict. c. 35.
1860—23 & 24 Vict. c. 16.
1861—24 & 25 Vict. c. 75.
1869—32 & 33 Vict. c. 23.
1869A—32 & 33 Vict. c. 55.
1871—34 & 35 Vict. c. 67.
1872—35 & 36 Vict. c. 60.
1872A—35 & 36 Vict. c. 86.
1873—36 & 37 Vict. c. 33.
1874—37 & 38 Vict. c. 59.
1875—38 & 39 Vict. c. 40.
1877—40 & 41 Vict. c. 69.
1878—41 & 42 Vict. c. 26.

PART I.

PRELIMINARY.

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12. Disqualifications for being councillor (*f. c.* 1835—s. 28 ; 1837—s. 15 ; 1842—ss. 1, 7, 8 ; 1852—ss. 1, 6 ; 1869A—s. 5).
13. Term of office and rotation of councillors (*f. c.* 1835—ss. 30, 31, 43).
14. Number, term of office, and rotation of aldermen (*f. c.* 1835—ss. 25, 27).
15. Qualification, term of office, salary, precedence, and powers of mayor (*f. c.* 1835—ss. 6, 25, 49, 57, 58 ; 1836A—s. 4).
16. Power of mayor to appoint deputy (*f. c.* 1853—ss. 7, 8).

Officers of Council.

17. The town clerk and deputy (*f. c.* 1835—ss. 58, 65).
18. The treasurer (*f. c.* 1835—s. 58 ; 1843—s. 6).

*** *f. c.* refers to former enactments.

Sect.

19. Other borough officers (*f. e.* 1835—s. 58).
20. Security by and remuneration of officers (*f. e.* 1835—s. 58).
21. Accountability of officers (*f. e.* 1835—s. 60).

Meetings and Proceedings of Council; Committees.

22. Quarterly and other meetings of council; appointment of committees, minutes, &c. (*f. e.* 1835—ss. 69, 70; 1837—s. 22; 1842—s. 2; 1873—s. 3).

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23. Power of council to make byelaws (*f. e.* 1835—ss. 90, 91; 38 & 39 Vict. c. 55, s. 187).
24. Evidence of byelaws (*f. e.* 1873—s. 2).

Accounts and Audit.

25. The borough auditors (*f. e.* 1835—ss. 37, 93; 40 & 41 Vict. c. 66, s. 1).
26. Half-yearly accounts of treasurer (*f. e.* 1835—s. 93; 40 & 41 Vict. c. 66, s. 1).
27. Audit and publication of treasurer's accounts (*f. e.* 1835—s. 93).
28. Returns to Local Government Board (*f. e.* 1836—s. 10; 1837—s. 43; 23 & 24 Vict. c. 51; 40 & 41 Vict. c. 66).

Revising Assessors.

29. Revising assessors in non-parliamentary boroughs (*f. e.* 1835—s. 37; 1837—ss. 4, 17; 1878—s. 20).

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30. Proceedings for division of borough into wards or alteration of wards (*f. e.* 1835—ss. 39, 40, 42, 43; 1837—s. 10; 1859—ss. 1, 2, 3; 1869—s. 4; 1871).

Supplemental and Exceptional Provisions.

31. Occupation of part of house (*f. e.* 1878—s. 5).
32. Claim by occupier to be rated (*f. e.* 1835—s. 11).
33. Rules as to qualification of burgess on succession, &c. (*f. e.* 1835—ss. 9, 10, 12; 1837—ss. 8, 9; 1869A—s. 1).
34. Obligation to accept office or pay fine (*f. e.* 1835—s. 51).
35. Declaration on acceptance of office (*f. e.* 1835—s. 50; 43 Vict. c. 17; and see 30 & 31 Vict. c. 72, s. 12).
36. Fine on resignation, &c. (*f. e.* 1836—s. 8).
37. Re-eligibility of office holders (*f. e.* 1835—ss. 25, 31).

*** *f. e.* refers to former enactments.

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38. Mayor and aldermen to continue members of council (*f. e.* 1835—s. 26).
39. Avoidance of office by bankruptcy or absence (*f. e.* 1835—s. 52; 32 & 33 Vict. c. 62, s. 21).
40. Filling of casual vacancies (*f. e.* 1835—ss. 27, 47, 49, 51; 1837—s. 11).
41. Penalty on unqualified person acting in office (*f. e.* 1835—s. 53; 1836—s. 7).
42. Validity of acts done notwithstanding disqualification, &c. (*f. e.* 1835—s. 53; 1837—ss. 1, 5).
43. Duties of town clerk, deputy, and treasurer during vacancy or incapacity (*f. e.* 1835—s. 16).

PART III.

Preparations for and Procedure at Elections.

Parish Burgess Lists; Burgess Rolls; Ward Rolls.

44. Preparation and revision of parish burgess lists (*f. e.* 1878—s. 18; 1835—ss. 15, 17, 18, 19, 44; 1857—s. 7).
45. The burgess roll and ward rolls (*f. e.* 1835—ss. 22, 44, 45; 1878—ss. 31, 33).
46. Arrangement of lists and rolls (*f. e.* 1835—ss. 22, 45; 1878—s. 21).
47. Correction of burgess roll (*f. e.* 1837—s. 24; 1878—s. 35).
48. Printing and sale of burgess roll and other documents (*f. e.* 1835—ss. 15, 17, 23; 1878—s. 30).
49. Separate list of persons qualified to be councillors but not to be burgesses (*f. e.* 1869A—s. 3; 1878—s. 19).

Election of Councillors.

50. Borough and ward elections (*f. e.* 1835—ss. 43, 44).
51. Title to vote (*f. e.* 1835—ss. 29, 44; 1872—s. 10; 1875—s. 5).
52. Day of election (*f. e.* 1835—s. 30).
53. Returning officer at election (*f. e.* 1835—ss. 32, 43).
54. Notice of election (*f. e.* 1875—s. 1).
55. Nomination of candidates (*f. e.* 1875—ss. 1, 2, 7; 1878—s. 34).
56. Relation of nomination to election (*f. e.* 1859—s. 8; 1875—s. 1).
57. Publication of uncontested election (*f. e.* 1859—s. 8).
58. Mode of conducting poll at contested election (*f. e.* 1835—ss. 32. 35; 1837—s. 18; 35 & 36 Vict. c. 33, s. 20).
59. Questions which may be put to voters (*f. e.* 1835—s. 34).

*** *f. e.* refers to former enactments.

Election of Aldermen.

Sect.

60. Time and mode of election of aldermen (*f. e.* 1835—s. 25; 1837—s. 14; 1853—s. 13).

Election of Mayor.

61. Time and mode of election of mayor (*f. e.* 1835—ss. 49, 69).

Election of Auditors and Assessors.

62. Time and mode of election of auditors and assessors (*f. e.* 183—s. 37; 1837—s. 4; 1875—s. 6; 40 & 41 Vict. c. 66, s. 1).

Supplemental and Exceptional Provisions.

63. Right of women to vote (*f. e.* 1869A—s. 9).
64. Polling districts (*f. e.* 1875—s. 10).
65. Notices as to elections (*f. e.* 1875—s. 8).
66. Time for filling casual vacancies (*f. e.* 1835—ss. 27, 47, 49; 1853—ss. 9, 11; 1875—s. 9).
67. Illness, &c., of mayor or returning officer (*f. e.* 1835—s. 36; 1837—s. 16; 1853—s. 10).
68. Election of councillor in more than one ward (*f. e.* 1835—s. 46).
69. Elections not in churches (*f. e.* 1835—s. 33).
70. Omission to hold election, or election void (*f. e.* 1837—ss. 25, 26; 11 Geo. 1, c. 4).
71. Burgess roll to be in operation until revision of new burgess roll (*f. e.* 1837—s. 6; 1857—s. 6).
72. Non-compliance with rules (*f. e.* 35 & 36 Vict. c. 33, s. 13; 1878—s. 41).
73. Election valid unless questioned within twelve months (*f. e.* 1843—s. 1).
74. Offences in relation to nomination papers (*f. e.* 1875—s. 1; 35 & 36 Vict. c. 33, s. 3).
75. Offences in relation to lists and elections (*f. e.* 1835—s. 48).
76. Revival of former law on expiration of Ballot Act (*f. e.* 1875—s. 15).

PART IV.

Corrupt Practices and Election Petitions.

Corrupt Practices.

77. Definitions (*f. e.* 1872—ss. 2, 3, 13).
78. General penalties for corrupt practices (*f. e.* 1872—s. 3).

*** *f. e.* refers to former enactments.

Sect.
79. Disqualifications and avoidance of election for corrupt practices by candidates (*f. e.* 1872—s. 4).
80. Disqualifications and avoidance of election for corrupt practices by agents, and for offences against this Part (*f. e.* 1872—s. 5).
81. Avoidance of election for general corruption (*f. e.* 1872—s. 6).
82. Paid agents and canvassers (*f. e.* 1872—s. 7).
83. Payment for conveyance of voters (*f. e.* 1872—s. 8).
84. Prosecutions for corrupt practices (*f. e.* 1872—s. 9).
85. Striking off votes (*f. e.* 1872—s. 10).
86. Personation (*f. e.* 1872—s. 11).

Election Petitions.

87. Power to question municipal election by petition (*f. e.* 1872—s. 12).
88. Presentation of petition (*f. e.* 1872—s. 13).
89. Security for costs (*f. e.* 1872—s. 13).
90. Petition at issue (*f. e.* 1872—s. 13).
91. Municipal election list (*f. e.* 1872—s. 13).
92. Constitution of election court (*f. e.* 1872—s. 14).
93. Trial of election petition (*f. e.* 1872—s. 15).
94. Witnesses (*f. e.* 1872—s. 16; 26 & 27 Vict. c. 29, s. 7).
95. Withdrawal of petition (*f. e.* 1872—s. 17).
96. Abatement of petition (*f. e.* 1872—s. 17).
97. Withdrawal and substitution of respondents (*f. e.* 1872—s. 18).
98. Costs on election petitions (*f. e.* 1872—s. 19).
99. Reception of and attendance on the election court (*f. e.* 1872—s. 20).
100. Rules of procedure and jurisdiction (*f. e.* 1872—s. 21).
101. Expenses of election court (*f. e.* 1872—s. 22).
102. Acts done pending a petition not invalidated (*f. e.* 1872—s. 23).
103. Provisions as to elections in the room of persons unseated on petition (*f. e.* 1872—s. 24).
104. Prohibition of disclosure of vote (*f. e.* 1872—s. 26).

PART V.

Corporate Property and Liabilities.

Corporate Land.

105. Power to purchase land for town hall, &c. (*f. e.* 1837—s. 40).
106. Power to borrow with approval of treasury (*f. e.* 1860—s. 8).
107. Power to acquire land with the approval of the Treasury (*f. e.* 1860—s. 8; 23 & 24 Vict. c. 106, s. 6).

*** *f. e.* refers to former enactments.

Sect.

108. Restrictions on alienation of corporate land without approval of Treasury (*f. e.* 1835—ss. 94, 95, 96; 1836—s. 2; and see 8 & 9 Vict. c. 18, s. 15).

109. Power to dispose of land with approval of Treasury (*f. e.* 1835—s. 94; 1836—s. 2).

110. Council may renew leases, &c. (*f. e.* 1835—s. 95).

Working Men's Dwellings.

111. Sites for working men's dwellings (*f. e.* 1874).

Repayment of Loans.

112. Power for Treasury to impose conditions as to repayment of money borrowed (*f. e.* 1860—ss. 1, 8).

113. Provisions as to sinking fund (*f. e.* 1860—s. 2).

Purchase or Compensation Money.

114. Provision for replacing purchase or compensation money paid to treasurer (*f. e.* 1860—s. 3).

115. Investment of proceeds of sale, or exchange authorized by Treasury (*f. e.* 1860, s. 4).

116. Power for Treasury to authorize application of certain investments for benefit of borough (*f. e.* 1860—s. 5).

Misappropriation.

117. Penalty for misappropriation of moneys (*f. e.* 1860—s. 7; 39 & 40 Vict. c. 20, s. 3).

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118. Transfer of and other dealings with corporate stock (*f. e.* 1837—ss. 45, 46, 47, 48).

Borough Bridges.

119. Maintenance of borough bridges (*f. e.* 1850A).

Loans for Municipal Buildings.

120. Power to borrow for buildings.

Advowsons and similar Rights.

121. Obligations and powers in respect of advowsons, &c. (*f. e.* 1835—s. 139; 1838—ss. 2, 3, 4).

*** *f. e.* refers to former enactments.

Sect.
122. Regulations as to sale of ecclesiastical patronage belonging to municipal corporation (*f. e.* 1835—s. 139; 6 & 7 Will. 4, c. 77, s. 26; 1836—s. 3; 1838—s. 1).

Special Rates.

123. Power to continue rates for special purposes (*f. e.* 1835—s. 84).

Misapplication of Corporate Property.

124. Prohibition of expenditure of corporate funds on parliamentary elections (*f. e.* 2 & 3 Will. 4, c. 69).

Transitory Provisions.

125. Transfer of investments made before 1860 in names of trustees (*f. e.* 1860, s. 6).
126. Scheme respecting mortgage debts incurred before 1860 (*f. e.* 1860, s. 10).
127. Consolidation of debts incurred before 1860 (*f. e.* 1860, s. 11).
128. Saving for sales, &c., in pursuance of past contracts and resolutions (*f. e.* 1835—s. 94).
129. Saving for rates in respect of past debts. (*See* 1835—s. 85).
130. Saving for rights of creditors in respect of tolls or dues (*f. e.* 1835—s. 92).
131. Saving for lawful debts contracted before 5 & 6 Will. 4, c. 76 (*f. e.* 1835—s. 92; 1836—s. 1; 1837—s. 28).
132. Saving against new liability to debts contracted before 5 & 6 Will. 4, c. 76 (*f. e.* 1835—s. 92).

PART VI.

Charitable and other Trusts and Powers.

Charitable Trusts.

133. Administration of charitable trusts and vesting of legal estate (*f. e.* 1835—s. 71; 16 & 17 Vict. c. 137, s. 65; 23 & 24 Vict. c. 36, s. 2).

Special Trusts and Powers.

134. Corporation to be trustee where corporators trustees (*f. e.* 1835—s. 72).
135. Appointment of members of council to be trustees in cases of joint trusts and other cases (*f. e.* 1835—s. 73).

*** *f. e.* refers to former enactments.

Local Acts.

Sect.

136. Transfer of powers of local authorities to municipal corporations (*f. e.* 1857—ss. 2, 3).
137. Power for council to extend local lighting Act (*f. e.* 1835—s. 87).
138. Exercise of powers under local Acts (*f. e.* 1836A—s. 8).

PART VII.

Borough Fund: Borough Rate: County Rate.

Borough Fund.

139. Payments to borough fund (*f. e.* 1835—s. 92).
140. Application of borough fund (*f. e.* 1835—s. 59—92; 1878—s. 30).
141. Orders for payment of money (*f. e.* 1835—s. 59; 1837—s. 44).
142. Payments to and by treasurer.
143. Application of surplus of borough fund (*f. e.* 1835—s. 92; 1860—s. 12).

Borough Rate.

144. Power for council to make borough rate and assess contribution thereto (*f. e.* 1835—s. 92; 55 Geo. 3, c. 51).
145. Collection of borough rate in undivided parish (*f. e.* 1837A).
146. Collection of borough rate in divided parish (*f. e.* 12 & 13 Vict. c. 65, s. 2; 13 & 14 Vict. c. 101, s. 10; 39 & 40 Vict. c. 61, s. 7; 42 & 43 Vict. c. 54, s. 17).
147. Rating of owners instead of occupiers for borough rate in certain cases.
148. Warrants for levy of borough rate (*f. e.* 1836—s. 5).
149. Borough rate to go to borough fund; and its application (*f. e.* 1835—s. 92).

County Rate.

150. General exemption of quarter sessions boroughs from county rate (*f. e.* 1835—s. 112).
151. Liability of quarter sessions borough for prosecution expenses of county (*f. e.* 1835—s. 114).
152. Liability of certain quarter sessions boroughs to other county expenses (*f. e.* 1835—s. 117; 1853—s. 5; 42 & 43 Vict. c. 30, s. 5).
153. Mode of accounting by borough to county (*f. e.* 1835—s. 117; 15 & 16 Vict. c. 81, s. 38; 5 Geo. 4, c. 85, s. 2).

*** *f. e.* refers to former enactments.

PART VIII.

Administration of Justice.

County Justices.

Sect.
154. Jurisdiction of county justices in borough (*f. e.* 1835—s. 111).

Borough Justices.

155. Mayor and last Mayor to be borough justices (*f. e.* 1835—s. 57; 1861—s. 2).
156. Separate commission of peace (*f. e.* 1835—s. 98).
157. Qualification of borough justice (*f. e.* 1835—ss. 98, 101, 104; 1836A—s. 3; 1861—s. 3; and see 31 & 32 Vict. c. 72, s. 6, and 34 & 35 Vict. c. 48, s. 2).
158. Jurisdiction of borough justices (*f. e.* 1835—ss. 101, 128; 1837—s. 31; 1850B—s. 9).
159. Clerk to borough justices (*f. e.* 1835—s. 102; 1861—s. 5).
160. Justices room (*f. e.* 1835—s. 100.)

Stipendiary Magistrate.

161. Appointment of stipendiary magistrate (*f. e.* 1835—s. 99).

Borough Quarter Sessions; Recorder; Clerk of the Peace.

162. Grant of separate court of quarter sessions (*f. e.* 1835—ss. 103 112).
163. The recorder (*f. e.* 1835—ss. 103, 104; 1836A—s. 3; and see 34 & 35 Vict. c. 48, s. 2).
164. The clerk of the peace (*f. e.* 1835—ss. 103, 124).
165. Recorder to hold court of quarter sessions (*f. e.* 1835—s. 105; 1836A—s. 8).
166. Power to appoint deputy recorder (*f. e.* 1843—s. 8).
167. Powers of Mayor in absence of recorder and deputy recorder (*f. e.* 1835—s. 106).
168. Power for recorder to form a second court (7 Will. 4 & 1 Vict. c. 19, ss. 1, 2, 3; 40 & 41 Vict. c. 17, ss. 1, 2).
169. Liability of borough having quarter sessions for prosecutors' expenses (*f. e.* 1835—s. 113).

Sheriff.

170. Appointment of sheriff in counties of cities and counties of towns (*f. e.* 1835—s. 61; 1836A—s. 5).

*** *f. e.* refers to former enactments.

Coroner.

Sect.

171. Appointment, fees, &c., of borough coroner in boroughs having separate quarter sessions (*f. e.* 1835—s. 62; see also 7 Will. 4 & 1 Vict. c. 68, s. 3).

172. Power of borough coroner to appoint a deputy (*f. e.* 1836A—s. 6).

173. Returns by borough coroners (*f. e.* 1835—s. 63).

174. Acting of county coroner in borough (*f. e.* 1835—s. 64).

Borough Civil Court.

175. Judge of borough civil court where there is a recorder (*f. e.* 1835—s. 118; 1836A—s. 9; 1837—ss. 32, 33; 1869).

176. Judge of borough civil court where there is no recorder (*f. e.* 1835—s. 118).

177. Tenure of judge (*f. e.* 1835—s. 118).

178. Registrar and other officers and fees (*f. e.* 1835—ss. 119, 124).

179. Solicitors (*f. e.* 1835—s. 119).

180. Time of holding court (*f. e.* 1836A—s. 9; 1839—s. 2).

181. Procedure (*f. e.* 1839—s. 3).

182. Power for judge to make rules of procedure (*f. e.* 1835—s. 118; 1836A—s. 9; 1839—ss. 1, 3).

183. Jurisdiction of court (*f. e.* 1835—s. 118).

184. Saving for borough civil courts and for 35 & 36 Vict. c. 86.

185. Power to extend jurisdiction of borough civil court (*f. e.* 1837—s. 35).

Borough Juries.

186. Provisions as to juries in boroughs (*f. e.* 1835—s. 121; 1837—s. 36).

Exceptional Provisions.

187. Grants to boroughs not affected by subsequent grants to counties (*f. e.* 2 & 3 P. & M. c. 18).

188. Trial of offences committed in counties of cities and counties of towns (*f. e.* 1835—s. 109).

189. Jurisdiction in places separated from borough (*f. e.* 1837—s. 30).

PART IX.

Police.

Watch Committee; Constables.

190. Council to appoint watch committee (*f. e.* 1835—s. 76).

191. Appointment, duties and powers of borough constables (*f. e.* 1835—ss. 76, 77).

*** *f. e.* refers to former enactments.

Sect.
192. Quarterly returns as to borough constables (*f. e.* 1835—s. 86; 21 & 22 Vict. c. 67).
193. Power for constables to apprehend disorderly persons, &c. (*f. e.* 1835—s. 78).
194. Penalties on constables for neglect of duty (*f. e.* 1835—s. 80).
195. Penalty for assaults on constables (*f. e.* 1835—s. 81).

Special Constables.

196. Appointment of special constables (*f. e.* 1835—s. 83, 31 & 32 Vict. c. 72, s. 12; see 17 & 18 Vict. c. 102, s. 8; 1 & 2 Will. 4, c. 41).

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197. Levy of watch rate (*f. e.* 1835—s. 92; 1839A—22 & 23 Vict. c. 32, s. 6; 1840).
198. Watch rate in divided parish (*f. e.* 1845—ss. 2-7).
199. Warrant for levy of watch rate (*f. e.* 1836—s. 5).
200. Watch rate to go to borough fund (*f. e.* 1835—s. 92).

PART X.

FREEMEN.

201. Definition of freeman.
202. Freedom not by gift or purchase (*f. e.* 1835—s. 3).
203. The freemen's roll (*f. e.* 1835—s. 5).
204. Admission to freedom (*f. e.* 1835—s. 5; 1837—s. 27).
205. Reservation of rights of property to freemen and others (*f. e.* 1835—ss. 2, 3).
206. Limit of value and saving as to conditions precedent (*f. e.* 1835—s. 2).
207. Saving for power to question right (*f. e.* 1835—s. 2).
208. Reservation of beneficial exemptions to freemen and others (*f. e.* 1835—s. 2; 1836—s. 9).
209. Reservation of parliamentary franchise, &c. (*f. e.* 1835—s. 4; 1 & 2 Vict. c. 35).

PART XI.

GRANT OF CHARTERS.

210. Power to Crown in granting charter to borough to extend to it the provisions of the Municipal Corporations Acts (*f. e.* 1877—s. 3).

*** *f. e.* refers to former enactments.

Sect.
211. Reference to Committee of Council, and notice of petition for charter (*f. e.* 1877—s. 4).
212. Power by charter to settle wards, and by fixing dates and otherwise to adapt the Municipal Corporations Acts to first constitution of new borough (*f. e.* 1877—s. 5).
213. Scheme for continuance or abolition of and adjustment of rights of existing local authority and officers (*f. e.* 1877—s. 6).
214. Supplemental provisions as to scheme and charter (*f. e.* 1877—s. 7; 24 & 25 Vict. c. 47, s. 2).
215. Provision as to police force in new borough (*f. e.* 1877—s. 8).
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217. Power to settle scheme in case of recent charters (*f. e.* 1877—s. 13).
218. Power to amend scheme.

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Legal Proceedings.

219. Prosecution of offences and recovery of fines (*f. e.* 1835—ss. 127-131).
220. Exclusion of *certiorari* (*f. e.* 1835—s. 132).
221. Application of penalties in quarter sessions boroughs (*f. e.* 1835—s. 126).
222. Duties of clerk of peace as to fines and forfeitures (*f. e.* 1857—s. 5).
223. Service of summons or warrant (*f. e.* 1835—s. 101).
224. Procedure in penal actions against corporate officers (*f. e.* 1835—s. 53).
225. *Quo warranto* and *mandamus* (*f. e.* 1837—s. 23; 1843—ss. 1, 5).
226. Provisions for protection of persons acting under Act (*f. e.* 1835—s. 133).
227. Power for borough constables to take bail (*f. e.* 1835—s. 79).

PART XIII.

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228. Boundaries of boroughs and transfer of parts to counties (*f. e.* 1835—ss. 7, 8; 1836B—ss. 1, 2, 5; 1837—s. 41).
229. Adjustment between boroughs and counties on change of boundaries (*f. e.* 1835—s. 8; 1836B—s. 1).

*** *f. e.* refers to former enactments.

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Sect.
230. Computation of time (*f. c.* 3 & 4 Will. 4, c. 31; 1835—s. 30; 1837—s. 25; 1872—s. 25; 1875—s. 11).

Distance.

231. Measurement of distances (*f. c.* 1869A—s. 1; 6 & 7 Vict. c. 18, s. 76).

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232. Notices on town hall.

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233. Inspection of documents (*f. c.* 1835—ss. 5, 15, 69, 93; 1837—s. 22; see 12 Geo. 3, c. 21, s. 2; 32 Geo. 3, c. 58, s. 4).

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234. Tables of fees to be posted (*f. c.* 1835—s. 125).

Seals and Signatures.

235. Forgery (*f. c.* 1873—s. 4).

Applications to Treasury.

236. Notice of application to and correspondence with Treasury (*f. c.* 1835—s. 94; 1860—ss. 8, 9).

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237. Acts of deputy not to be invalidated by defect in appointment.

Overseers.

238. Notices to and acting of overseers (*f. c.* 1853—s. 14).

Declarations and Oaths.

239. Power to administer oaths, &c. (*f. c.* 1835—s. 104; 1836A—s. 3).

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240. Forms in schedule (*f. c.* 1835—s. 142).

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241. Misnomer or inaccurate description not to hinder (*f. c.* 1835—s. 142).

*** *f. c.* refers to former enactments.

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242. Provision for references in unrepealed enactments to 5 & 6 Will. 4, c. 76, &c.

243. Short titles of Acts partly repealed.

Returning Officers at Parliamentary Elections.

244. Mayor of certain boroughs to be returning officer in parliamentary elections (*f. e.* 1835—s. 57).

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245. Electors in disfranchised boroughs (*f. e.* 31 & 32 Vict. c. 41).

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246. Explanation of terms "town corporate," &c., in Licensing Act (*f. e.* 1861—s. 4).

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247. Right of free trading in boroughs (*f. e.* 1835—s. 14).

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248. Special provisions as to certain of the Cinque Ports (*f. e.* 1835—ss. 134, 135; 1836A—ss. 10, 11).

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249. Vice-Chancellor of Cambridge (*f. e.* 1836A—s. 12).

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250. Saving for existing corporations.

251. Saving for local Acts (*f. e.* 1836B—s. 4).

252. Saving for Prison Acts.

253. Saving for military and naval officers, &c. (*f. e.* 1835—s. 51).

254. Saving for dockyards, barracks, &c. (*f. e.* 1835—s. 89).

255. Saving as to Admiralty (*f. e.* 1835—ss. 64, 89; 2 & 3 Will. 4, c. 40).

256. Saving for Lord Warden (*f. e.* 1835—s. 108).

257. Saving for universities (*f. e.* 1835—ss. 137, 138; 1839A—s. 2; 1857—s. 2; 1861—s. 2).

258. Saving for jurisdiction over cathedral precincts (*f. e.* 1835—s. 138).

259. Saving for royal prerogative (*f. e.* 1877—s. 10).

260. Saving as to repealed enactments.

*** *f. e.* refers to former enactments.

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*** *f. e.* refers to former enactments.

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PART I.—*Declarations on accepting Office* (*f. e.* 1835—ss. 50, 104).

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PART III.—*Forms relating to Working Men's Dwellings* (*f. e.* 1874).

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THE NINTH SCHEDULE.

ENACTMENT IN WHICH A REFERENCE TO THIS ACT IS TO BE SUBSTITUTED.

PART I.—*General References.*

PART II.—*Particular References.*

*** *f. e.* refers to former enactments.

MUNICIPAL CORPORATIONS ACT, 1882.

45 & 46 Vict. Cap 50.

An Act for consolidating, with Amendments, enactments relating to Municipal Corporations in England and Wales. [18th August, 1882.]

WHEREAS divers bodies corporate at sundry times have been constituted in the cities, towns, and boroughs of England and Wales to the intent that the same might for ever be and remain well and quietly governed (*a*):

(*a*) The preamble should be carefully noted. The preamble has been said to be a good means to find out the meaning of a statute, and, as it were, a key to the understanding of it. (*See* "Maxwell on the Interpretation of Statutes," p. 35.)

The meaning of several of the enactments of this Act may be open to doubt, and in such cases the preamble should be consulted. The main object of the Act is to consolidate the existing provisions of former statutes. It will be necessary, therefore, in cases of ambiguity to consult such statutes. A review of the whole Act makes it evident that the intention of the legislature was to place a large number of matters required for the good government of a borough under the control of a local representative body—the Town Council—and to give them a status, staff, and the command of necessary funds. The statute should, therefore, receive such an interpretation as will secure the contemplated ends.

And whereas the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, "to provide for the regulation of Municipal Corporations in England and Wales," applies to most of those bodies constituted before the passing of that Act, and to every of those bodies constituted after the passing of that Act; and that Act having been from time to time much altered and added to by other Acts, it is expedient that all the Acts aforesaid be reduced into one Act with some amendments (*b*):

(*b*) This Act has been regarded as the Magna Charta of municipal government. The manifest spirit of trust in local administration which pervades it has met with a worthy response from our corporate towns, where a strong public feeling has been awakened, and has manifested itself in the advancement of every work having for its object the improvement of the locality and the comfort of the

Note. inhabitants or the amelioration of their condition. It is earnestly hoped that those upon whom rest, in the last resort, the interpretation of the present Act will give encouragement, by a liberal view of the powers it confers, to those bodies who are honestly and wisely endeavouring to sustain the burden of local self-government.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

PART I.

Preliminary.

Short title. **1.**—This Act may be cited as the Municipal Corporations Act, 1882.

Division of Act into parts. **2.**—This Act is divided into parts, as follows:

Part I.—Preliminary.
Part II.—Constitution and government of borough.
Part III.—Preparations for and procedure at elections.
Part IV.—Corrupt practices and election petitions.
Part V.—Corporate property and liabilities.
Part VI.—Charitable and other trusts and powers.
Part VII.—Borough fund: borough rate: county rate.
Part VIII.—Administration of justice.
Part IX.—Police.
Part X.—Freemen.
Part XI.—Grant of charters.
Part XII.—Legal proceedings.
Part XIII.—General.

Extent. **3.**—This Act shall not extend to Scotland or Ireland.

Commencement. **4.**—This Act shall commence and have effect from and immediately after the thirty-first of December, one thousand eight hundred and eighty-two.

Repeals. **5.**—The enactments described in the first schedule are hereby repealed, subject to the exceptions and qualifications in this Act mentioned.

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6.—This Act shall apply to every city and town to which the Municipal Corporations Act, 1835, applies at the commencement of this Act, and to any town, district, or place whereof the inhabitants are incorporated after the commencement of this Act, and whereto the provisions of the Municipal Corporations Acts are under this Act extended by charter, but to no other place. Application.

7.—(1.) In this Act— Interpretation and construction.

"Borough" means, unless a contrary intention appears, a city or town to which this Act applies:

"Municipal corporation" means the body corporate constituted by the incorporation of the inhabitants of a borough:

"Municipal Corporations Act, 1835" means the recited Act of King William the Fourth, the date of the passing whereof is the ninth of September, one thousand eight hundred and thirty-five:

"Municipal Corporations Acts" means this Act and any Act to be passed amending this Act:

"Burgess" includes citizen:

"Corporate seal" means the common seal of a municipal corporation:

"Corporate office" means the office of mayor, alderman, councillor, elective auditor, or revising assessor:

"Corporate land" means land belonging to or held in trust for a municipal corporation:

"Municipal election" means an election to a corporate office:

"Parliamentary borough" means any borough, city, county of a city, county of a town, place, or combination of places, returning a member to serve in Parliament, and not being a county at large, or a riding, parts or division of a county at large:

"Parliamentary election" means an election of a member to serve in Parliament:

"Parish" means any place for which a separate poor rate is or can be made:

"Overseers" means overseers of the poor of a parish,

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township, or place, and includes all persons who execute the duties of overseers:

"County" does not include a county of a city or county of a town, but includes a riding, parts, division, or liberty of a county.

"Trustees" means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated:

"Person" includes a body of persons corporate or unincorporate:

"Treasury" means the commissioners of Her Majesty's Treasury.

"The Secretary of State" means one of Her Majesty's principal secretaries of State:

"High Court" means Her Majesty's High Court of Justice:

"Justice" means one of Her Majesty's justices of the peace:

"Borough civil court" means an inferior court of record for the trial of civil actions which by charter, custom, or otherwise is or ought to be holden in a borough, but does not include a county court:

"Bank of England" means the governor and company of the Bank of England:

"Schedule" means schedule to this Act, and "part" means part of this Act.

"Writing" includes print, and "written" includes printed.

(2.) Words in this Act referring to a borough, municipal corporation, authority, officer, or office, shall be construed distributively as referring to each borough, corporation, authority, officer, or office to which or to whom the provision is applicable.

(3.) Words in this Act referring to a parish shall be construed, unless a contrary intention appears, as referring to every parish situate wholly or in part in a borough.

(4.) The schedules shall be read and have effect as if they were part of this Act.

PART II.

CONSTITUTION AND GOVERNMENT OF BOROUGH.

Corporate Names.

Name of municipal corporation.

8.—The municipal corporation of a borough shall bear the name of the mayor, aldermen, and burgesses of the borough, or, in the case of a city, the mayor, aldermen, and citizens of the city.

Burgesses.

Qualification of burgess.

9.—(1.) A person shall not be deemed a burgess for any purpose of this Act unless he is enrolled as a burgess.

(2.) A person shall not be entitled to be enrolled as a burgess unless he is qualified as follows:

(*a.*) Is of full age; and

(*b.*) Is on the fifteenth of July in any year, and has been during the whole of the then last preceding twelve months, in occupation, joint or several (*a*), of any house, warehouse, counting-house, shop, or other building (*b*) (in this Act referred to as qualifying property) in the borough; and

(*c.*) Has during the whole of those twelve months resided in the borough, or within seven miles thereof (*c*); and

(*d.*) Has been rated (*d*) in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate (*e*); and

(*e.*) Has on or before the twentieth of the same July paid all such rates, including borough rates (if any), as have become payable by him in respect of the qualifying property (*f*) up to the then last preceding fifth of January.

(3.) Every person so qualified shall be entitled to be enrolled as a burgess, unless he—

(*a.*) Is an alien (*g*); or

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(*b.*) Has within the twelve months aforesaid received union (*h*) or parochial relief or other alms (*i*); or

(*c.*) Is disentitled under any Act of Parliament (*k*).

(*a*) The words "joint or several" are new, but are introduced in accordance with the decision in *Reg.* v. *Mayor of Exeter*, L. R. 4 Q. B. 114. They clear up any doubt that may have existed.

(*b*) For an extended description of the words "house, warehouse, counting-house, shop, or other building," *see* sect. 31.

(*c*) This distance is to be measured as the crow flies, and may be determined by the Ordnance Survey (*see* sect. 231). The residence need not be an occupation as owner or tenant—an actual residence is sufficient (see *Beal* v. *Ford*, L. R. 3 C. P. D. 73).

(*d*) A claim by an occupier to be rated, and payment or tender of the amount due for poor rate, is sufficient to entitle a person to be deemed to be rated (*see* sect. 32).

(*e*) It appears that the claimant may be in arrears with rates not due in respect of the qualifying property without invalidating his claim. This does not seem a wise provision. It gives every one concerned in securing the correctness of the burgess roll considerable trouble; and the fact that a man has not paid the rates due from him, in respect of any portion of the borough, should disqualify.

(*f*) See Poor Rate Assessment and Collection Act, 1879, in Appendix.

(*g*) A certificate of naturalization may be granted to an alien who has been resident in the United Kingdom for a term of not less than five years, and who complies with the other conditions mentioned in section 7 of the Naturalization Act, 1870 (33 & 34 Vict. c. 14). Such certificate entitles an alien to all political and other rights of a natural-born British subject. Section 2 of the above Act, which enables an alien to acquire real and personal property, provides that such section shall not qualify an alien for any office or for any municipal franchise. In the case of *MacLaren* v. *Milne Home*, 44 L. T. R. (N.S.) 289, the vote was objected to on the ground that the voter was an alien. The voter was on the register, but it was proved that he was an alien. It was argued that an alien was prohibited from voting by statute or by the common law of parliament. It was replied that an alien was incapacitated but not prohibited, and reliance was placed upon the decision of BLACKBURN, J., in the *Oldham Case* (1 O. M. and H. 159). HAWKINS, J., said that 7 & 8 Vic. cap. 66, which gave aliens, citizens of friendly states, the right to hold land, expressly prohibited them from voting (sect. 2). A disqualification might be regarded as a prohibition. The court reserved judgment, but ultimately intimated a reluctance to overrule the decision in the *Oldham Case*, and suggested that the objection should be withdrawn, else they would deem it necessary to reserve a case for the opinion of a Common Pleas division.

(*h*) The word "union" is new. It is introduced to meet the case of relief, where it is a charge on the common fund of the union.

(*i*) As to medical or surgical assistance, or removal to a hospital at the cost of a local authority, or admission to a public school, *see* sect. 33.

Parochial relief given to a man's father is not relief given to himself. (*Reg.* v. *Ireland*, L. R. 3 Q. B. 130.) In that case C. J. COCKBURN said he doubted very much indeed, even if the father were

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living with the son, so as to constitute one of his immediate family, relief given to the father would be relief to the son.

The Poor Law Act (4 & 5 Will. 4, c. 76, s. 56) enacts that all relief given to or on account of the wife or children under the age of sixteen, not being blind or deaf and dumb, shall be considered to have been given to the husband or father of such wife or children as the case may be. Any relief given to or on account of any child or children under the age of sixteen of any widow shall be considered as given to such widow. In the case of the widow, the words "not being blind or deaf and dumb" are not repeated after children; but there can be no doubt they should be read into the text.

The Court of Queen's Bench held, in the case of *Reg.* v. *Mayor, &c., of Lichfield*, 2 Q. B. 693, that the receipt of weekly alms from a charity fund not under the control of the overseers or the charitable trustees was not a disqualification within the words of the section, and that the word parochial must be read as applying to "relief" and also to "alms."

The words parochial relief or other alms occur in the 56th section of the 2 & 3 Will. 4, c. 45. In the case of *Harrison* v. *Carter*, L. R. 2 C. P. D. 26, it was held that the word alms is not confined to parochial donations or sums distributed by the overseers other than from the funds collected for the poor rates, but may include moneys distributed annually from the income of a private charitable trust, bequeathed by an individual for the use of the poor inhabitants of a parish.

The 12th section of 41 & 42 Vict. c. 26 provides that "the overseers of every parish situate wholly or partly either in a parliamentary borough or in a municipal borough, the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, shall ascertain from the relieving officer acting for that parish the names of all persons who are disqualified from being inserted in the lists of parliamentary voters or burgess lists for that parish by reason of having received parochial relief; and the relieving officer, upon application from the overseers, shall produce to them at such place within the parish, and at such time as is required by them, the books in his possession containing the names of those persons."

(*k*) Under the 79th section certain acts disqualify the person found guilty thereof from being enrolled or voting as a burgess for a limited period of time.

There is a distinction to be observed between those persons who are not entitled to be enrolled and those who are not entitled to vote.

Section 9 of 19 & 20 Vict. c. 64, provides that no constable can vote whilst he continues to be such, or within six months after he has ceased to be a constable, for the election of any person for any municipal office.

A person convicted of treason or felony is disqualified; but pardoned felons may vote; and a felon who has endured the punishment to which he has been adjudged can vote. There is no objection to the vote of a man in custody upon conviction for a misdemeanour. *See* "Rogers on Elections," 13th Ed., pp. 188 and 189; and 33 & 34 Vict. c. 23, s. 2.

As to disqualification for a corrupt practice at a school board election, *see* sect. 91 of the Education Act, 1870 (33 & 34 Vict. c. 75).

Council; Mayor, Aldermen, and Councillors.

Sect. 10.
Constitution of council.

10.—(1.) The municipal corporation of a borough shall be capable of acting by the council of the borough, and the council shall exercise all powers vested in the corporation by this Act or otherwise (*a*).

(2.) The council shall consist of the mayor, aldermen, and councillors (*b*).

(*a*) It will be observed that the council are not incorporated. They are the individuals who are appointed to manage the affairs of the corporation—that is, of the mayor, aldermen, and burgesses or citizens as the case may be. (See *The Corporation of Hyde* v. *The Bank of England*, 46 L. T. R. (N.S.) 910.) "Or otherwise," *i.e.*, by other Acts of Parliament, or by charter, or by prescription.

(*b*) The 22nd section provides that no act of the council shall be questioned on account of any vacancy in their body. The 42nd section legalises the acts of a person in actual possession of a corporate office notwithstanding his disqualification.

Qualification of councillor.

11.—(1.) The councillors shall be fit (*a*) persons selected by the burgesses.

(2.) A person shall not be qualified to be elected or to be a councillor, unless he—

(*a.*) Is enrolled and entitled to be enrolled as a burgess (*b*); or

(*b.*) Being entitled to be so enrolled in all respects except that of residence, is resident beyond seven miles, but within fifteen miles (*c*) of the borough, and is entered in the separate non-resident list directed by this Act to be made (*d*); and

(*c.*) In either of those cases, is seized or possessed of real or personal property or both, to the value or amount, in the case of a borough having four or more wards, of one thousand pounds, or in the case of any other borough, of five hundred pounds, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value of thirty pounds, and in the case of any other borough of fifteen pounds.

(3.) Provided, that every person shall be qualified to be

elected and to be a councillor, who is, at the time of election, qualified to elect to the office of councillor; which last-mentioned qualification for being elected shall be alternative for and shall not repeal or take away any other qualification (*e*).

(4.) But if a person qualified under the last foregoing proviso ceases for six months to reside in the borough, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election and continues to be qualified in some other manner (*f*).

(*a*) "Fit" means, in the first place, legally fit, *i.e.*, having the legal qualifications. A felon undergoing punishment is disqualified by 33 & 34 Vict. c. 23, s. 2. There is no doubt that the High Court could remove from his office a person grossly unfit. For instance, a councillor who, by his persistent misbehaviour and disregard of order, caused the business of the council to come to a stand, or who constantly used disgusting and insulting language so as to render it impossible for the rest of the council to remain in conference with him without loss of self-respect. An habitual drunkard would probably be held to be an unfit person. It speaks volumes in praise of the persons selected by the burgesses that it does not appear to have been necessary to resort to this provision, although it was contained in the Act of 1835. A commissioned officer in the army on full pay is not capable of serving a corporate office. (*See* The Army Act, 1881 (44 & 45 Vict. c. 58), s. 146.)

The question of the fitness of a woman to serve a corporate office has been already dealt with in the Preface. (*See* further on amotion from a corporate office, Chapter IX., in the First Division of this work.)

(*b*) This sub-section must not be read distributively, but *de longue haleine*. There must be not only enrolment, but a good title. (See *Middleton and Others* v. *Simpson*, 42 L. T. (N.S.) 55; and L. R. 5 C. P. D. 183.)

(*c*) As to measurement of distances, *see* sect. 231.

(*d*) *See* sect. 49.

(*e*) A person is qualified to elect because he is a burgess. A councillor, therefore, need not have any property or ratal qualification if he is on the burgess roll, and entitled to be enrolled thereon. This observation does not apply to those who are entered on the "separate non-resident list." They must be qualified by property or rating.

The 35th section provides that no person elected to a corporate office shall act until he has made the declaration named in the 8th schedule. This schedule contains a declaration to be made by those qualified by estate, but says nothing of the rating qualification. Those who must qualify by estate or rating are those on the separate non-resident list, as they cannot qualify as burgesses. There appears to be no sufficient reason for keeping alive this distinction. The inhabitants resident beyond the seven miles have been brought in on

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the ground of the large stake they usually have in the prosperity of the town. The declaration, therefore, by the elected that he will faithfully fulfil the duties of his office would have been sufficient. As it is a burgess must take the declaration that he will faithfully fulfil the duties of his office, and need not go further. A non-resident when elected must take the same declaration, and must go on to declare that he has a property qualification, unless, indeed, he depends on his ratal; and then, as in the case of a burgess, he need only declare that he will faithfully fulfil the duties of his office.

(*f*) Under this sub-section a person would lose his qualification as a *burgess* by removal to the "seven-fifteen miles radius," except he was qualified by estate or ratal at the time of his election, and so continued. He would not be qualified by estate or ratal alone without enrolment in the separate list.

By section 39, continuous absence from the borough by an alderman or councillor for more than six months disqualifies.

Disqualifications for being councillor.

12.—(1.) A person shall be disqualified for being elected and for being a councillor, if and while he—

(*a.*) Is an elective auditor or a revising assessor, or holds any office or place of profit, other than that of mayor or sheriff, in the gift or disposal of the council; or

(*b.*) Is in holy orders, or the regular minister of a dissenting congregation (*a*); or

(*c.*) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council (*b*):

(2.) But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in—

(*a.*) Any lease (*c*), sale, or purchase of land, or any agreement for the same; or

(*b.*) Any agreement for the loan of money, or any security for the payment of money only; or

(*c.*) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted; or

(*d.*) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough; or

(*e.*) Any railway company, or any company incorporated by Act of Parliament or royal charter, or under the Companies Act, 1862 (*d*). Sect. 12. 25 & 26 Vict. c. 89.

(*d*) In a consolidation act it was impossible to omit this disqualification for corporate office. It is, however, antiquated. Clergymen and ministers are often elected to act as co-optative members in those cases in which town councils are empowered to appoint members of committees outside their own bodies. They are generally able members of other public bodies, and might render essential service in municipal matters, if not incapable of acting by Act of Parliament. Why restrict the choice of the burgesses? (*See* note to the 9th schedule, 2nd part.)

In the case of the *Queen* v. *Oldham*, L. R. 4 Q. B. 290, on a motion for a *quo warranto* information against a town councillor of a borough, on the ground that he was disqualified as being "the regular minister of a dissenting congregation," it appeared that the defendant carried on business in the borough, and had been invited by the members of an Independent chapel to be their minister, which invitation he refused, but he subsequently agreed to preach for them every Sunday for six months. It was held that the defendant was not "the regular minister of a dissenting congregation" within sect. 28 of the Act of 1835, and was, therefore, not disqualified as town councillor.

(*e*) Under the corresponding section of a repealed statute it was held that an alderman of a borough who sold iron to the party who had contracted to supply the corporation with iron railings, and who purchased the iron from him for the purpose of performing the contract, had not an interest in such a contract as to make him liable to the prescribed penalty.

COLERIDGE, J., said: There is no attempt to show fraud or any previous concert between the alderman and the contractor by which the alderman might have the benefit of the contractor's custom. It is said that it is within the mischief of the Act, for that the alderman might have to decide on the quality of his own goods. Even if the case be brought within the mischief, it is not within the words of the enactment, and we must not strain the penal enactment so as to bring the case within it; but many instances might be put in which kindred and affection and other things, clearly not within the Act, might bias the mind to a greater degree, and be as much within the mischief as this. (*Lefeuvre* v. *Lancaster*, 3 E. & B. 530.)

The case of *Fletcher* v. *Hudson*, L. R. 7 Q. B. D. 611; and 46 L. T. R. (N.S.) 125, turned upon the construction to be placed upon similar words contained in the Public Health Act, 1875. In that case the defendant was a member of a local board. Whilst a member he did team work for the local board, at the request of the surveyor to the board, amounting to trifling sums. BRAMWELL, L. J., dissented from the judgment of the court, which was that the defendant had been concerned in a contract by the board, and had thereupon ceased to be a member of the board, and was liable to the prescribed penalty if he afterwards acted.

In the case of *Lewis* v. *Carr*, 36 L. T. R. (N.S.) 44; L. R. 1 Ex. D. 484, which turned upon the construction to be placed upon the corresponding section of the repealed statute, the facts were as follows:—

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The defendant was a burgess and an alderman of the borough of Macclesfield.

On six different occasions, between the 19th of June and the 31st December, 1874, goods were supplied from the defendant's shop to the town council, according to the orders of the council, and they paid for the goods.

The defendant subsequently, on the 19th of June, 1875, and afterwards, acted five times as an alderman of the borough.

The plaintiff sued the defendant to recover the penalties under sect. 53 of the Municipal Corporations Act for his having so acted.

Held (affirming the decision of the Exchequer Division below), that defendant, under sect. 28, was disqualified from being an alderman of the borough only so long as his interest in the contract with the council continued, and he did not cease to be qualified, or become disqualified, after that interest had determined, and, therefore, that he was not liable. (*See* also *Reg.* v. *Francis*, 18 Q. B. 526; 21 L. J. (N.S.) C. L. 304, referred to in note to sect. 225.)

Nicholson v. *Fields*, 21 L. J. Ex. 233, was a case which turned on the construction to be placed upon a clause in the Commissioners Act, 1847 (10 & 11 Vict. c. 16, s. 9), by which a commissioner who should be concerned or participate in any manner in any contract with the board should thenceforth cease to be a commissioner.

In that case POLLOCK, C. B., said, in effect, that, when you look at the facts of this case, there are several invoices showing a dealing which went over several months. The items are trifling; but that has nothing to do with the question. It is clear it was intended that all and every description of jobbing should be put an end to as far as legislation could do it, and that persons who were parties to any contract should be incapable of exercising the office of commissioners—in other words, from dealing with themselves.

It was urged in a subsequent case, *Fletcher* v. *Hudson*, L. R. 7 Q. B. D. 611, that *Lewis* v. *Carr* must be considered to have overruled *Nicholson* v. *Fields*. In view, however, of the enormous influence which corporations who have gasworks, waterworks, sewage farms, tramways, and other undertakings under their control, besides the large works to be carried out for the public health, it is most important that the members of a council should be above suspicion. They should have no interest to bias their judgments in deciding what is for the public good. The leaning of the courts seems to be to a strict interpretation of this sub-section. It is clear that members of a town council should be advised to keep themselves absolutely free from the possibility of any imputation in this respect. The first essential of good local self-government is purity of administration, and to attain that object the courts will give full effect to this sub-section.

The case of *Lefeuvre* v. *Lancaster* cannot be relied upon, where there has been the slightest attempt on the part of a member of a council to influence its decision in favour of a particular contractor to whom it had been arranged beforehand that such member should supply the materials for carrying out the contract. Even in a case on all fours with that of *Lefeuvre* v. *Lancaster* it would be unwise for a member of a council to take any part whatever in any discussion relating to the particular contract.

(*c*) By the Public Health Act, 1875, rule 64 of sched. 2, any member in any manner concerned in any bargain or contract entered into by the board vacates his seat. There is a proviso that no member shall so vacate his seat by reason of his being interested in

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the sale or lease of any lands. N. was elected a member of the board. He was at that time lessee of certain lands of the board used as a sewage farm. *Held*, that N. was not disqualified. *Reg.* v. *Gascarth*, 42 L. T. (N.S.) 688; 49 L. J. Q. B. 509; L. R. 5 Q. B. D. 321.

(*d*) By the Companies Act, 1867, 30 & 31 Vict. c. 131, s. 2, it is provided that:—

"The Companies Act, 1862, is hereinafter referred to as 'the principal Act,' and the principal Act and this Act are hereinafter distinguished as and may be cited for all purposes as 'The Companies Acts, 1862 and 1867,' and this Act shall, so far as is consistent with the tenour thereof, be construed as one with the principal Act and the expression 'this Act' in the principal Act, and any expression referring to the principal Act which occurs in any Act or other document shall be construed to mean the principal Act as amended by this Act."

By the Companies Act, 1877, 40 & 41 Vict. c. 26, s. 2, it is provided that:—

"This Act shall, so far as is consistent with the tenour thereof, be construed as one with the Companies Acts, 1862 and 1867, and the said Acts and this Act may be referred to as 'The Companies Acts, 1862, 1867, and 1877.'"

By the Companies Act, 1879, 42 & 43 Vict. c. 76, s. 3, it is provided that:—

"This Act shall, so far as is consistent with the tenour thereof, be construed as one with the Companies Acts, 1862, 1867, and 1877, and those Acts, together with this Act, may be referred to as the Companies Acts, 1862 to 1879."

Term of office and rotation of councillors

13.—(1.) The term of office of a councillor shall be three years.

(2.) On the ordinary day of election of councillors in every year (*a*) one third of the whole number of councillors for the borough or for the ward, as the case may be, shall go out of office, and their places shall be filled by election.

(3.) The third to go out shall be the councillors who have been longest in office without re-election (*b*).

(*a*) The ordinary day of election is the first of November, sect. 52. If that falls on a Sunday, &c., *see* sect. 230.

One-third only go out annually. Each councillor can be changed every third year. The power of removing representatives thus vested in the burgesses is amply sufficient to secure to them as much practical control in the council as is compatible with the stability of local self-government. It must be remembered that a council is not only a legislative body, but mainly administrative. To change the administration abruptly would throw power into the hands of the permanent official executive, and tend to weaken the grasp of the council over the details of the administration. Constant changes of policy would lessen the confidence felt in the character of the council, and would materially affect its influence and repute. As a legislative body the council is extremely sensitive to public opinion, and there is the constant pressure of such opinion when men live among their constituents. There appears to be no danger of councils overriding

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public opinion. On the contrary, there is reason to fear that they are at times too much influenced by the clamour of small sections pretending to speak in the name of the whole community. The real public opinion of a town is sure to be reflected in the council, and to prevail in its deliberations.

(*b*) This means those who have been longest in office without re-election, and without reference to casual vacancies under sect. 40. For instance, if A. B. and C. had been elected councillors for the ward D. in the order named, A. would be the longest in office without re-election, and would go out of office before B. and C. If, however, there has been a casual vacancy during the last year of A's tenure of office, and E. is elected in his place, then B. would be the longest in office without re-election. He would not, however, go out of office until his turn came, as E. would retire at the expiration of the time for which A. was elected. (*See* sect. 40).

Number, term of office, and rotation of aldermen.

14.—(1.) The aldermen shall be fit persons elected by the council.

(2.) The number of aldermen shall be one-third of the number of councillors.

(3.) A person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor.

(4.) If a councillor is elected to, and accepts, the office of alderman he vacates his office of councillor.

(5.) The term of office of an alderman shall be six years.

(6.) On the ordinary day of election (*a*) of aldermen in every third year one half of the whole number of aldermen shall go out of office, and their places shall be filled by election.

(7.) The half to go out shall be those who have been aldermen for the longest time without re-election (*b*).

(*a*) The term of office of an alderman is twice that of a councillor. The aldermen are generally elected from among those councillors who have served for many years, or who have been made justices of the peace for the borough. Occasionally a gentleman, not a member of the council, whose services are considered of special value in some department, has been offered the office. There is no doubt that the aldermen have played a most important part in sustaining the dignity and importance of town councils. As a rule, they are men of great experience in local affairs, and as they have a position independent of the passing passion of the hour, they are able to maintain and carry on local self-government until the popular mind has been enlightened, and a just appreciation of a measure has been established. The suggestion made in some quarters that aldermen should be elected like councillors would detract from the usefulness

of councils. The aldermen, however, should be elected by the cumulative vote of the councillors. A bill to secure this desirable end was brought into the House of Commons a few years since, but was withdrawn. The cumulative vote would bring about a true reflection of the councillors amongst the aldermen.

(*b*) *See* note (*b*), *supra*.

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15.—(1.) The mayor shall be a fit person elected by the council from among the aldermen or councillors or persons qualified to be such (*a*).

Qualification, term of office, salary, precedence and powers of mayor.

(2.) An outgoing alderman is eligible.

(3.) The term of office of the mayor shall be one year, but he shall continue in office until his successor has accepted office and made and subscribed the required declaration (*b*).

(4.) He may receive such remuneration as the council think reasonable.

(5.) He shall, subject to the provisions of this Act respecting justices, have precedence in all places in the borough (*c*).

(6.) The mayor of a borough named in the schedules to the Municipal Corporations Act, 1835, shall be capable in law to do and suffer all acts which the chief officer of the borough might at the passing of that Act lawfully do or suffer, as far as the same were not altered or annulled by that Act, or have not been altered or annulled by any subsequent Act.

(*a*) "Or qualified to be such." These words are new, and extend the choice of the council to the same class of persons as those who may be elected aldermen. (*See* Preface, where this addition is commented upon.)

(*b*) Section 35 prescribes the declaration. The mayor must also take the oaths and make the declaration prescribed for justices before acting as a justice. (*See* sect. 157).

(*c*) *See* sect. 155.

16.—(1.) The mayor may from time to time appoint an alderman or councillor to act as deputy mayor during the illness or absence of the mayor (*a*).

Power of mayor to appoint deputy.

(2.) The appointment shall be signified to the council in writing and be recorded in their minutes (*b*).

(3.) A deputy mayor may, while acting as such, do all acts which the mayor as such might do, except that he

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shall not take the chair at a meeting of the council unless specially appointed by the meeting to do so (*c*), and shall not, unless he is a justice, act as a justice or in any judicial capacity.

(*a*) By sect. 237 no defect in the appointment of a deputy invalidates his acts.

An election as alderman was held to be void, on the ground that the respondent being interested in the result of the election as a candidate, was incapacitated from presiding and acting as returning officer. (*Fanagan* v. *Kernan*, 8 L. R. Jr. 44.)

(*b*) No time is mentioned for this, but it should be done at the earliest time practicable.

(*c*) This is an alteration of the law. In the absence of the mayor, the council were obliged to chose an alderman if any were present, to preside at their meetings. If the deputy mayor, therefore, was not an alderman, and there was an alderman present, the council could not put the deputy mayor in the chair. This is now wisely amended.

Officers of Council.

The town clerk and deputy.

17.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the town clerk of the borough (*a*).

(2.) The town clerk shall hold office during the pleasure of the council.

(3.) He shall have the charge and custody of, and be responsible for, the charters, deeds, records, and documents of the borough, and they shall be kept as the council direct (*b*).

(4.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(5.) In case of the illness or absence of the town clerk, the council may appoint a deputy town clerk, to hold office during their pleasure (*c*).

(6.) All things required or authorized by law to be done by or to the town clerk may be done by or to the deputy town clerk (*d*).

(*a*) The words used in former enactments, enabling an attorney to be appointed a town clerk, have been omitted as unnecessary. The town clerk should be appointed under seal. *See* Chapter II. of the 1st division of this work.

And it has been held that where a town clerk had been appointed by a resolution of the council, but before any steps were taken to

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invest him in the office, such resolution was duly rescinded by another at an adjourned meeting of the council; this was a sufficient removal of him from the office. (*R.* v. *Thomas*, 8 A. & E. 183.)

Such salary is the only compensation to which he is entitled for the discharge of duties cast upon him either by the Municipal Corporations Acts, or the Parliamentary Reform Act. (*Jones* v. *Carmarthen* (*Mayor*), 8 M. & W. 605. *See* also *Thomas* v. *Swansea* (*Mayor*), 11 M. & W. 83; *Steavenson* v. *Norwich* (*Mayor*), 1 Q. B. 154.) But he may be repaid money which he has *necessarily* disbursed. (*R.* v. *Hull* (*Governors of the Poor*), 2 E. & B. 182.)

Where a town clerk with a fixed salary had been directed by a finance committee appointed by the council to take the opinion of counsel and other proceedings to ascertain the validity of a disputed rate, it was held that his charges so far as regarded business done in the direct course of settling the dispute, might properly be allowed by the council, as not being covered by the salary for his ordinary duties, and were payable out of the borough fund; that the directions by the finance committee were sufficient; and that, at least after payment, it was no objection that there was no retainer for the extra services under seal. (*R.* v. *Prest*, 16 Q. B. 32; 20 L. T. Q. B. 17.)

(*b*) The words of former enactments were "charters, deeds, muniments, and records." The word "muniments" has been omitted, and the word "documents" added.

The town clerk has no lien on the corporation muniments, which he holds merely in that capacity; though he has on papers, with respect to which he has done work as an attorney or solicitor. (*R.* v. *Sankey*, 5 A. & E. 43.)

(*c*) *See* sect. 237 as to informality in appointment of a deputy.

(*d*) The deputy town clerk can only act during the illness or absence of the town clerk.

The duties cast upon town clerks are so numerous and important, that it is often necessary that some of the functions of the town clerk should be discharged by deputy. It is a pity, therefore, that the power in the council to appoint a deputy has been confined to the case of illness or absence.

There is no general power given to the council to define the duties of the town clerk, treasurer, and other officers appointed by them. There are certain statutory duties which they must fulfil. It is the custom of councils, however, to define the duties of every officer appointed by them, and the ordinary law of master and servant applies to such engagements, subject to the special provisions of this Act.

The treasurer.

18.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the treasurer of the borough.

(2.) The treasurer shall hold office during the pleasure of the council.

(3.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(4.) The offices of town clerk and treasurer shall not be held by the same person.

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Other borough officers.

19. The council shall from time to time appoint such other officers as have been usually appointed in the borough, or as the council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be re-appointed.

Security by and remuneration of officers.

20. The council shall require every officer appointed by them to give such security (*a*) as they think proper for the due execution of his office, and shall allow him such remuneration as they think reasonable.

(*a*) The manner of giving such security and the amount are left to the council. Something more than the officer's own bond seems intended.

Where sureties had entered into a bond for the performance of his duties by a treasurer elected under the 5 & 6 Will. 4, c. 76, "during the whole time of his continuing in the said office in consequence of the said election, or under any annual or other future election to the said office;" and the treasurer, having been annually appointed under that Act, was re-appointed during pleasure under the 6 & 7 Vict. c. 89, it was *held* that the sureties were not discharged by this change in the tenure of the office, as its nature and duties remained the same. (*Berwick* (*Mayor &c.*), v. *Oswald*, 1 E. & B. 295; 3 E. & B. 653; 5 H. L. Ca. 853. *See* also *Dartmouth* (*Mayor, &c.*), v. *Tilly*, 7 E. & B. 97; 26 L. J. Q. B. 90.)

Accountability of officers.

21.—(1.) Every officer appointed by the council shall at such times during the continuance of his office, or within three months after his ceasing to hold it, and in such manner as the council direct, deliver to the council, or as they direct, a true account in writing of all matters committed to his charge, and of his receipts and payments, with vouchers, and a list of persons from whom money is due for purposes of this Act in connexion with his office, showing the amount due from each.

(2.) Every such officer shall pay all money due from him to the treasurer, or as the council direct.

(3.) If any such officer—

(*a.*) Refuses or wilfully neglects to deliver any account or list which he ought to deliver, or any voucher relating thereto, or to make any payment which he ought to make; or

(*b.*) After three days notice in writing, signed by the town clerk or by three members of the council, given or left at his usual or last known place of abode, refuses or wilfully neglects to deliver to the council, or as they direct, any book or document which he ought so to deliver, or to give satisfaction respecting it to the council or as they direct;

a court of summary jurisdiction having jurisdiction where the officer is or resides may, by summary order, require him to make such delivery or payment, or to give such satisfaction.

(4.) But nothing in this section shall affect any remedy by action against any such officer or his surety, except that the officer shall not be both sued by action and proceeded against summarily for the same cause (*a*).

(*a*) The remedy here given does not affect the right of the council to proceed criminally against any of its officials for acts within the criminal law.

The power given by this section to the council is very extensive. How could one of the principal officials of a council, after a lengthened period of service, render a true account in writing of all matters committed to his charge?

There is little fear, however, that this power will be exercised tyranically.

Meetings and Proceedings of Council; Committees.

Quarterly and other meetings of council; appointment of committees minutes, &c.

22.—(1.) The rules in the second schedule shall be observed.

(2.) The council may from time to time appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of persons, as they think fit, for any purposes which, in the opinion of the council, would be better regulated and managed by means of such committees; but the acts of every such committee shall be submitted to the council for their approval (*a*).

(3.) A member of the council shall not vote or take part in the discussion of any matter before the council, or a committee, in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest (*b*).

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(4.) No act or proceeding of the council, or of a committee, shall be questioned on account of any vacancy in their body.

(5.) A minute of proceedings at a meeting of the council, or of a committee, signed at the same or the next ensuing meeting, by the mayor, or by a member of the council, or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(6.) Until the contrary is proved, every meeting of the council, or of a committee, in respect of the proceedings whereof a minute has been so made, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

(*a*) When the council have approved of such minutes, their ratification legalizes whatever has been done, *omnis ratihabitio retrotrahitur et mandato priori equiparatur.*

(*b*) Generally no person is qualified to act as a member of a town council who is interested in any contract or employment with the exceptions named in sect. 12. Many matters may arise, however, in which a member of the council has a pecuniary interest. These may come within the exceptions named in sect. 12, or they may not be matters in the nature of a contract or employment. For instance, an application by a tramway company for the consent of the council to a provisional order of the Board of Trade, and of which company councillors may be shareholders. In such instances the member of the council cannot vote, and the mayor or chairman if clearly satisfied that he has a pecuniary interest in the matter, would be justified in refusing to take the vote. (See *Reg.* v. *Mayor of Ryde*, 28 L. T. (N.S.) 629. *See* also the 41st section as to disqualified person acting in a corporate office.)

Bye-laws.

Power of council to make bye-laws.

23.—(1.) The council may, from time to time, make such bye-laws as to them seem meet for the good rule and government of the borough (*a*), and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceed-

ing in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same.

(2.) Such a bye-law shall not be made unless at least two-thirds of the whole number of the council are present (*b*).

(3.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall (*c*).

(4.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of Her Privy Council, disallows the bye-law or part thereof, the bye-law or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the bye-law shall not come into force, and in that case the bye-law shall not come into force until after the expiration of that enlarged time.

(5.) Any offence against such a bye-law may be prosecuted summarily (*d*).

(6.) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven of the Public Health Act, 1875; and that section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances.

38 & 39 Vict. c. 55.

(*a*) This section confers on councils very large powers, and covers many cases in which councils have thought it necessary to obtain the sanction of parliament. It seems advisable that councils should rely upon this section, and not encumber local Acts with matters that may be made the subject of bye-laws. (See *Shillito* v. *Thompson*, L. R. 1 Q. B. D. 12.)

(*b*) The decision of the majority of those *present and voting* will, however, be sufficient. (*See* Second Schedule, sect. 10.)

(*c*) *See* sect. 232.

(*d*) *See* sect. 219.

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Evidence of bye-laws.

24. The production of a written (*a*) copy of a bye-law made by the council under this Act, or under any former or present or future general or local Act of parliament, if authenticated by the corporate seal shall, until the contrary is proved, be sufficient evidence of the due making and existence of the bye-law, and, if it is so stated in the copy, of the bye-law having been approved and confirmed by the authority whose approval or confirmation is required to the making or before the enforcing of the bye-law.

(*a*) "Written" includes "printed." *See* definition in sect. 7.

Accounts and Audit.

The borough auditors.

25.—(1.) There shall be three borough auditors, two elected by the burgesses, called elective auditors, and one appointed by the mayor, called mayor's auditor.

(2.) An elective auditor must be qualified to be a councillor (*a*), but may not be a member of the council, or the town clerk or the treasurer.

(3.) The mayor's auditor must be a member of the council.

(4.) The term of office of each auditor shall be one year.

(5.) The appointment of the mayor's auditor shall be made on the ordinary day of election of the elective auditors (*b*).

(6.) On a casual vacancy in his office an appointment to fill it shall be made within ten days after the occurrence of the vacancy (*c*).

(*a*) *See* sect. 12.
(*b*) *See* sect. 62.
(*c*) This sub-section refers only to the mayor's auditor. The 66th section provides for a vacancy in the office of elective auditor.

Half-yearly accounts of treasurer.

26. The treasurer shall make up his accounts half-yearly to such dates as the council, with the approval of the Local Government Board, from time to time appoint; and, subject to any such appointment, to the dates in use at the commencement of this Act.

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Audit and publication of treasurer's accounts.

27.—(1.) The treasurer shall within one month from the date to which he is required to make up his accounts in each half year, submit them, with the necessary vouchers and papers, to the borough auditors, and they shall audit them (*a*).

(2.) After the audit of the accounts for the second half of each financial year the treasurer shall print a full abstract of his accounts for that year.

(*a*) The 93rd section of the Act of 1835, required the auditors to sign the accounts if found correct. This is now omitted. The reason for this is not apparent. It may be said that no legal effect followed such signing; but it was a proof that the accounts had been audited.

Returns to Local Government Board.

28.—(1.) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year.

(2.) The return shall be made for the financial year ending on the twenty-fifth of March, or on such other day as the Local Government Board, on the application of the council, from time to time prescribe.

(3.) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

(4.) The return shall be sent to the Local Government Board within one month after the completion of the audit for the second half of each financial year.

(5.) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds to be recovered by action on behalf of the Crown in the High Court (*a*).

(6.) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament (*b*).

(*a*) This is a very unfair piece of legislation. The returns should be required to be made by the council, and the fine enforced against them.

The town clerk is the officer of the council, and might be placed in a difficult position, if the council withheld from him the information necessary to enable him to comply with the requirements of the

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Local Government Board, or denied him the assistance by which alone he could compile the necessary returns.

The corporation, however, can pay such fine out of the borough fund. (*See* sect. 226, sub-sect. 3.)

(*b*) These returns might be made exceedingly useful, if they were prepared upon a common basis, or contained the premises from which a true comparison might be made between the expenditure of one town and another.

The labour of preparing the returns now required by the various government departments is very heavy. Nevertheless, for all local purposes these returns have to be supplemented by others, obtained through the courtesy of municipal officials.

Revising Assessors.

Revising assessors in non-parliamentary boroughs.

29.—(1.) In every borough whereof no part of the area is co-extensive with or included in the area of a parliamentary borough, there shall be two revising assessors elected by the burgesses.

(2.) Every person shall be eligible who is qualified to be a councillor and is not a member of the council or the town clerk or treasurer.

(3.) The term of office of each revising assessor shall be one year (*a*).

(4.) Every revising assessor shall, as soon as conveniently may be after his election, and from time to time as occasion requires, appoint, by writing signed by him, a person eligible to the office of revising assessor, to be his deputy, to act for him in case of his illness or incapacity to act.

(5.) The appointment shall be signified to the council, in writing signed by the assessor, and be recorded in their minutes.

(*a*) The day of election is the 1st of March. (*See* sect. 62.)

Division of Borough into Wards, or alteration of Wards.

Proceedings for division of borough into wards or alteration of wards.

30.—(1.) If two-thirds of the council of a borough agree to petition (*a*), and the council thereupon petition, the Queen for the division of the borough into wards, or for the alteration of the number and boundaries of its wards, it shall be lawful for Her Majesty from time to time, by

order in Council, to fix the number of wards into which the borough shall be divided; and the borough shall be divided into that number of wards. Sect. 30.

(2.) Notice of the petition, and of the time when it pleases Her Majesty to order that the same be taken into consideration by Her Privy Council, shall be published in the *London Gazette* one month at least before the petition is so considered.

(3.) Where an order in Council has been so made, the Secretary of State shall appoint a commissioner to prepare a scheme for determining the boundaries of the wards and apportioning the councillors among them.

(4.) In case of division into wards, the commissioner shall apportion all the councillors among the wards.

(5.) In case of alteration of wards, he shall so apportion among the altered wards the councillors for those wards as to provide for their continuing to represent as large a number as possible of their former constituents.

(6.) In either case, each councillor shall hold his office in the ward to which he is assigned for the same time that he would have held it had the borough remained undivided or the wards unaltered.

(7.) In case of division into wards the returning officer at the first election for each ward held after the division shall, notwithstanding anything in this Act, be the mayor or a person appointed by the mayor.

(8.) If by reason of any division or alteration under this section any doubt arises as to which councillor should go out of office, the doubt may be determined by the council.

(9.) The division of a borough into a greater number of wards shall not affect the qualification of aldermen or councillors.

(10.) The number of councillors assigned to each ward shall be a number divisible by three; and in fixing their number the commissioner shall, as far as he deems it practicable, have regard as well to the number of persons rated in the ward as to the aggregate rating of the ward.

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(11.) The commissioner shall make the scheme in duplicate, and shall deliver one of the duplicates to the town clerk, and shall send the other to the Secretary of State, to be submitted by him to Her Majesty in Council for approval.

(12.) The scheme shall be published in the *London Gazette*, and shall come into operation at the date of that publication, and thenceforth the boundaries of wards and apportionment of councillors determined and made by the scheme shall be observed and be in force.

(13.) If Her Majesty in Council does not approve the scheme, as originally prepared by the commissioner, it shall nevertheless be published in the *London Gazette*, and shall be in force for the purposes of any municipal election until Her Majesty in Council, on further information and report from the commissioner, definitely approves a scheme in that behalf.

(14.) The commissioner may administer oaths, and may require any person having the custody of any book containing a poor rate made for a parish to produce the book for his inspection; and every person required by the commissioner to answer any question put to him for the purposes of this section shall answer it.

(15.) The commissioner shall have remuneration as appearing by the Fourth and Fifth Schedules.

(*a*) Observe that this is an absolute two-thirds. It does not appear necessary that the consent of the two-thirds should be given at a meeting of the council. Probably it would be as well that the consent should be so given.

Supplemental and Exceptional Provisions.

Occupation of part of house.

31. In and for the purposes of this Act—

(*a.*) The terms house, warehouse, counting house, shop, or other building include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession; and any such part may, for the purpose of describing the qualification, be described as

office, chambers, studio, or by any like term applicable to the case.

(*b.*) Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part (*a*).

(*a*) Although by the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5, the term "dwelling house" in the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), is to mean part of a house separately occupied, yet in order to be entitled to the borough franchise as the occupier of a dwelling house, the person must have an occupation in respect of which he can be rated to the relief of the poor, and therefore he is not entitled to such dwelling house franchise by reason of the occupation of part of a house if he occupies such part as a lodger.

The tenant of two rooms, which he took unfurnished at a weekly rent, had the exclusive use of such rooms and a key of the outer door of the house. His landlord had also a key of the outer door and resided in all the rest of the house, but supplied no attendance or service to such tenant.

Held, that such tenant occupied the rooms as a lodger, and consequently that in respect of such occupation he could not acquire the dwelling house franchise under the Representation of the People Act, 1867.

The tenant of two rooms, which he took unfurnished at a weekly rent, had in common with the other tenants of the house, which was wholly let out on similar tenancies, the use of the passages, staircase, street door, and usual conveniences of the house. The landlord and not the tenant was rated, and the landlord did all repairs inside and out, but he did not reside in the house, nor did he, save as aforesaid, retain the control and dominion over the house or render any services to any of the tenants.

Held, that such tenant did not occupy the rooms as a lodger, but as an occupying tenant under the Representation of the People Act, 1867, and that he could therefore acquire the dwelling house franchise in respect of such occupation.

Bradley, appellant, *Baylis*, respondent; *Morfee*, appellant, *Novis*, respondent; *Kirby*, appellant, *Biffen*, respondent, L. R. 8 Q. B. D. 195; 46 L. T. R. (N.S.) 253.

Claim by occupier to be rated.

32.—(1.) If an occupier of any qualifying property, whether the landlord is or is not liable to be rated to the poor rate in respect thereof, claims to be rated to the poor rate in respect thereof, and pays or tenders to the overseers of the parish where the property is situate the full amount of the poor rate last made in respect of the

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property, the overseers shall put the occupier's name on the rate book in respect of that rate.

(2.) If they fail to do so, he shall nevertheless for the purposes of this Act be deemed rated to that rate (*a*).

(*a*) *See* the 19th sect. of the 32 & 33 Vict. c. 41, and the 14th sect. of the 41 & 42 Vict. c. 26.

Rules as to qualification of burgess on succession, &c.

33.—(1.) Where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then, for the purpose of qualification, the occupancy of the property by a predecessor in title, and the rating of the predecessor in respect thereof, shall be equivalent to the occupancy and rating of the successor; and rating in the name of the predecessor shall, until a new rate is made after the date of succession, be equivalent to rating in the name of the successor; and the successor shall not be required to prove his own residence, occupancy, or rating before the succession.

(2.) The qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish.

(3.) Where by law a borough rate is payable by instalments, payment by any person of any such instalment shall, as regards his qualification to be enrolled as a burgess, be deemed a payment of the borough rate in respect of the period to which the instalment applies.

(4.) A person shall not be disentitled to be enrolled as a burgess by reason only—

(*a*.) That he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick (*a*), at the cost of any local authority; or

(*b*.) That his child has been admitted to and taught in any public or endowed school (*b*).

(*a*) *See* the 24th sect. of the Public Health Act, 1875, and the observations on this sub-section in the Preface.

(*b*) As to remission of school fees by school board *see* Elementary Education Act, 1870, s. 17. As to payment of such fees by guardians of the poor *see* Elementary Education Act, 1876, s. 10. Note Sect. 33.

Obligation to accept office or pay fine.

34.—(1.) Every qualified person elected to a corporate office, unless exempt under this section or otherwise by law (*a*), either shall accept the office by making and subscribing the declaration required by this Act (*b*) within five days after notice of election (*c*), or shall, in lieu thereof, be liable to pay to the council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or revising assessor, fifty pounds, and in case of a mayor one hundred pounds, as the council by bye-law determine (*d*).

(2.) If there is no bye-law determining fines, the fine, in case of an alderman, councillor, elective auditor, or revising assessor, shall be twenty-five pounds, and in case of a mayor fifty pounds.

(3.) The persons exempt under this section are—

(*a*.) Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and

(*b*.) Any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election.

(4.) A fine payable under this section shall be recoverable summarily.

(*a*) *See* sect. 12 and sect. 36; also sect. 253 and note thereon.

(*b*) *See* the following section.

(*c*) What notice is required? It is customary for the town clerk to serve on each person elected a notice of his election. Such notice would appear to be a sufficient official notification within the meaning of this section. This notice usually contains an intimation of the time and place where the elected can make and subscribe the required declaration. (See *Reg.* v. *Preece*, 5 Q. B. 94; S. C. Dav. & M. 156, referred to in note to sect. 225.)

(*d*) This fine in some boroughs is fixed as low as one shilling.

Sub-sect. 3 of the 40th sect. provides that non-acceptance of office shall create a casual vacancy.

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Declaration on acceptance of office.

35. A person elected to a corporate office shall not, until he has made and subscribed before two members of the council, or the town clerk (*a*), a declaration as in the Eighth Schedule, act in the office except in administering that declaration.

(*a*) This part is new. It will be found a great convenience.

Fine on resignation, &c.

36.—(1.) A person elected to a corporate office may at any time, by writing signed by him and delivered to the town clerk (*a*), resign (*b*) the office, on payment of the fine provided for non-acceptance thereof (*c*).

(2.) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant (*d*).

(3.) No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office.

(*a*) The method of resignation set out in the Act is new.

(*b*) A person who is disqualified cannot resign. (*Hardwick* v. *Brown*, L. R. 8 C. P. 406.) See *R.* v. *Blizard*, L. R. 2 Q. B. 55, as to when a *quo warranto* will be granted, although resignation has been accepted.

(*c*) The resignation without payment of the fine would not be effectual. Neither does the payment of the fine constitute a vacancy until the council shall under the next sub-section declare the office to be vacant, and signify the same by the notice there referred to.

(*d*) In the event of the council refusing to declare the vacancy, no election could be held to supply the vacancy in the council. The remedy would be by *mandamus* against the council to compel them to declare the office to be vacant.

Re-eligibility of office holders.

37. A person ceasing to hold a corporate office shall, unless disqualified to hold the office, be re-eligible.

Mayor and aldermen to continue

38. The mayor and aldermen shall, during their respective offices, continue to be members of the council,

notwithstanding anything in this Act as to councillors going out of office at the end of three years. Sect. 38. members of council.

39.—(1.) If the mayor, or an alderman or councillor— Avoidance of office by bankruptcy or absence.

(*a.*) Is declared bankrupt, or compounds by deed with his creditors, or makes an arrangement or composition with his creditors, under the Bankruptcy Act, 1869, by deed or otherwise; or 32 & 33 Vict. c. 71.

(*b.*) Is (except in case of illness) continuously absent from the borough, being mayor, for more than two months, or, being alderman or councillor, for more than six months:

he shall thereupon immediately become disqualified and shall cease to hold the office.

(2.) In any such event the council shall forthwith declare the office to be vacant (*a*), and signify the same by notice signed by three members of the council, and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

(3.) Where a person becomes so disqualified by being declared bankrupt, or compounding, or making an arrangement or composition, as aforesaid, the disqualification, as regards subsequent elections, shall, in case of bankruptcy, cease on his obtaining his order of discharge, and shall, in case of a compounding or composition as aforesaid, cease on payment of his debts in full, and shall, in case of an arrangement as aforesaid, cease on his obtaining his certificate of discharge (*b*).

(4.) Where a person becomes so disqualified by absence, he shall be liable to the same fine as for non-acceptance of office, recoverable summarily, but the disqualification shall, as regards subsequent elections, cease on his return.

(*a*) *See* note on sect. 36.

(*b*) The following case under the repealed sections may be referred to. B. a town councillor of N. in July, 1872, made a composition with his creditors under the Bankruptcy Act, 1869, under which a resolution was come to for a composition in satisfaction of B.'s debts. On the 4th of November B. placed his resignation of

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his office of councillor in the hands of the town clerk. At the annual meeting of the town council on the 9th of November the above letter was read and B.'s resignation was accepted by the council, and on the 18th he was re-elected a town councillor. Upon a case stated for the opinion of the court, pursuant to the Corrupt Practices (Municipal Elections) Act, 1872 (35 & 36 Vict. c. 40), it was held that B. having by reason of his having compounded with his creditors ceased to hold the office of councillor, was incapable of resigning it; and the council not having pursued the course pointed out by the Municipal Corporations Act, the election was therefore void. It was also held that B. not having paid his debts in full, he was not qualified for re-election under that section. (*Hardwick* v. *Brown*, L. R. 8 C. P. 406.)

An alderman made a composition with his creditors, but executed no deed of composition, nor were any proceedings taken under the Bankruptcy Act, 1869. The council were summoned for the purpose of declaring the office void. An injunction was granted by the Master of the Rolls at the instance of the alderman restraining the corporation from proceeding under their notice on the ground that the alderman had not become disqualified. (*Aslatt* v. *Southampton Corporation*, L. R. 16 Ch. D. 143; 50 L. J. Ch. 31; 43 L. T. 464; 45 J. P. 111.)

Filling of casual vacancies.

40.—(1.) On a casual vacancy in a corporate office, an election shall be held by the same persons and in the same manner as an election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2.) In case of more than one casual vacancy in the office of councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the council.

(3.) Non-acceptance of office by a person elected creates a casual vacancy (*a*).

(*a*) *See* sect. 34.

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Penalty on unqualified person acting in office.

41.—(1.) If any person acts in a corporate office (*a*) without having made the declaration by this Act required, or without being qualified at the time of making the declaration, or after ceasing to be qualified, or after becoming disqualified, he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action (*b*).

(2.) A person being in fact enrolled in the burgess roll shall not be liable to a fine for acting in a corporate office on the ground only that he was not entitled to be enrolled therein.

(*a*) When does a person act in a corporate capacity? By attending a council or committee meeting without voting, or taking any part in the discussion or proceedings? Until this question is decided it would be well that any such person should not be present at any council or committee meeting. Nevertheless it does not appear that the mere passive presence of such a person in the room where the council or committee meeting is held would alone constitute acting in a corporate capacity.

(*b*) As to notice of action *see* sect. 224. Under the Act of 1835 (sect. 53) the forfeiture was the full sum of fifty pounds. In some cases this worked a great hardship, the accumulated penalties for each time the defendant had acted amounting to many hundred pounds. The present provision, which makes the offender liable to a fine not exceeding fifty pounds, gives a discretion which no doubt the court will exercise in proper cases.

Validity of acts done notwithstanding disqualification, &c.

42.—(1.) The acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified.

(2.) An election of a person to a corporate office shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election.

(3.) A burgess roll shall not be liable to be questioned by reason of a defect in the title, or want of title, of the mayor or any revising authority by whom it is revised, if he was then in actual possession and exercise of the office of mayor or revising authority.

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Duties of town clerk, deputy, and treasurer, during vacancy or incapacity.

43. If there is no town clerk, and no deputy town clerk, or there is no treasurer, or the town clerk, deputy town clerk, or treasurer (as the case may be) is incapable of acting, all acts by law authorized or required to be done by or with respect to the town clerk or the treasurer (as the case may be) may, subject to the provisions of any other Act, be done by or with respect to a person appointed in that behalf by the mayor.

PART III.

Preparations for and Procedure at Elections.

Parish Burgess Lists: Burgess Rolls: Ward Rolls.

Preparation and revision of parish burgess lists.

44.—(1.) Where the whole or part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses are to be made out and revised, and claims and objections relating thereto are to be made, in accordance with the provisions of the Parliamentary and Municipal Registration Act, 1878 (*a*).

41 & 42 Vict. c. 26.

(2.) Where no part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses shall be made out and revised, and claims and objections relating thereto may be made, in accordance, as nearly as may be, with the provisions of Part I. of the Third Schedule.

(3.) In either case the lists shall be styled the parish burgess lists (*b*).

(*a*) These provisions are set out in the Appendix.

(*b*) The term "parish burgess list" has been adopted to mark the distinction between it and the burgess roll.

The burgess roll and ward rolls.

45.—(1.) When the parish burgess lists have been revised and signed, the revising authority shall deliver

them to the town clerk, and a printed copy thereof, examined by him and signed by him, shall be the burgess roll of the borough.

(2.) The burgess roll shall be completed on or before the twentieth (*a*) of October in each year, and shall come into operation on the first of November in that year, and shall continue in operation for the twelve months beginning on that day.

(3.) The names in the burgess roll shall be numbered by wards or by polling districts, unless in any case the council direct that the same be numbered consecutively without reference to wards or polling districts.

(4.) Where the borough has no wards, the burgess roll shall be made in one general roll for the whole borough.

(5.) Where the borough has wards, the burgess roll shall be made in separate rolls, called ward rolls (*b*), one for each ward, containing the names of the persons entitled to vote in that ward, and the ward rolls collectively shall constitute the burgess roll.

(6.) A burgess shall not be enrolled in more than one ward roll (*c*).

(7.) Where a duplicate of a burgess list is made under section thirty-one of the Parliamentary and Municipal Registration Act, 1878, it shall have the same effect as the original, and may be delivered instead thereof.

(8.) Every person enrolled in the burgess roll shall be deemed to be enrolled as a burgess, and every person not enrolled in the burgess roll shall be deemed to be not enrolled as a burgess.

(9.) No stamp duty shall be payable in respect of the enrolment of a burgess.

(*a*) This is an alteration. Formerly it was the 22nd of October. If a parish list is not made out in time the old lists are to be in force. The same with the burgess roll. (*See* sect. 71.) In *Rudge* v. *Andrews*, L. R. 3 C. P. D. 510, it was decided that every person whose name is on the burgess roll published in October is entitled to be nominated for election on the 1st day of November, notwithstanding that he is not on the roll in force at the time the nomination paper is signed.

The question was also raised whether a burgess on the roll in

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force at the time of nomination, but not on the roll upon which the election proceeds, can be a nominator. This question was not decided.

Lush, J. in *The Queen* v. *Parkinson*, L. R. 3 Q. B. 11, said, "The person nominating the candidate votes for him." But now by the 18th Rule of Part 2, Sched. 3, for the purposes of nomination a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up shall be deemed to be enrolled, though the roll is not yet completed.

(*b*) "Ward roll" has been substituted for "ward list" as more appropriate.

(*c*) *See* the provisions of the Parliamentary and Municipal Registration Act, 1878, in Appendix.

Arrangement of lists and rolls.

46.—(1.) If and as far as the council so direct, the parish burgess lists, and the burgess roll, and the ward rolls (if any), and the lists of claimants and respondents (*a*), or any of those documents, shall be arranged in the same order in which the qualifying properties appear in the rate book for the parish in which they are situate, or otherwise in such order as will cause those lists and rolls to record the qualifying properties in successive order in the street or other place in which they are situate (*b*).

(2.) Subject to any such direction, and to the provisions of this Act as to polling districts, the arrangement of the lists and rolls shall be alphabetical.

(*a*) For the meaning of the words "claimant" and "respondent," *see* the Third Schedule, Part 1.

(*b*) *See* sect. 21 of the 41 & 42 Vict. c. 26, in the Appendix.

Correction of burgess roll.

47.—(1.) Where the parish burgess lists are revised under the Parliamentary and Municipal Registration Act, 1878, the burgess roll is subject to alteration or correction in manner provided by section thirty-five of that Act (*a*).

(2.) Where the parish burgess lists are revised under this Act, any person whose claim has been rejected or name expunged at the revision of the lists may apply, within two months (*b*) after the last sitting of the revision court, to the High Court in the Queen's Bench Division for a *mandamus* to the mayor to insert his name in the burgess roll; and thereupon the court shall inquire into the title of the applicant to be enrolled (*c*).

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(3.) If the court grants a *mandamus*, the mayor shall insert the name in the burgess roll, and shall add thereto the words "by order of Her Majesty's High Court of Justice," and shall subscribe his name to those words.

(*a*) *See* the section referred to in the Appendix.
(*b*) "Two months" have been substituted for "before the end of the term next following."
(*c*) *See* further as to *mandamus*, Chapter VII., in the first division of this work.

Printing and sale of burgess roll and other documents.

48.—(1.) The town clerk shall cause the parish burgess lists, the lists of claimants and respondents, and the burgess roll, to be printed, and shall deliver printed copies to any person on payment of a reasonable price for each copy.

(2.) Subject to section thirty of the Parliamentary and Municipal Registration Act, 1878, the proceeds of sale shall go to the borough fund (*a*).

(*a*) For this section, *see* Appendix.

Separate list of persons qualified to be councillors but not to be burgesses.

49.—(1.) The overseers of each parish shall at the same time that they make the parish burgess list make a list of the persons entitled in respect of the occupation of property in that parish to be elected councillors, as being resident within fifteen miles, although beyond seven miles from the borough (*a*).

(2.) The provisions of this Act as to the parish burgess lists, and claims and objections relating thereto, and the revision of those lists shall, as nearly as circumstances admit, apply to the lists made under this section.

(3.) The town clerk shall arrange the names entered in these lists, when revised, in alphabetical order as a separate list (in this Act called the separate non-resident list), with an appropriate heading, at the end of the burgess roll.

(*a*) *See* sect. 11, and sect. 9 of the Parliamentary and Municipal Registration Act, 1878.

Election of Councillors.

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Borough and ward elections.

50.—(1.) Where a borough has no wards, there shall be one election of councillors for the whole borough.

(2.) Where a borough has wards, there shall be a separate election of councillors for each ward.

Title to vote.

51.—(1.) At an election of councillors a person shall be entitled to subscribe a nomination paper (*a*), and to demand and receive a voting paper, and to vote, if he is enrolled in the burgess roll, or, in the case of a ward election, the ward roll, and not otherwise.

(2.) No person shall subscribe a nomination paper in or for more than one ward, or vote in more than one ward (*b*).

(3.) Nothing in this section shall entitle any person to do any act therein mentioned who is prohibited by law from doing it, or relieve him from any penalty to which he may be liable for doing it.

(*a*) *See* Third Schedule, Part II. Rules 3 and 10, and the notes thereon.

(*b*) Notwithstanding the provisions of sub-sect. 6 of sect. 45, it will happen that a burgess is enrolled in more than one ward. By subscribing a nomination paper, or voting in one ward, he makes his selection, and cannot afterwards nominate or vote in another ward. As to nomination, see *The Queen* v. *Parkinson*, L. R. 3 Q. B. 11 ; and as to voting, see *Reg.* v. *Tugwell*, L. R. 3 Q. B. 704, 713 ; *Reg.* v. *Harrald*, L. R. 8 Q. B. 418. *See* also sub-sect. 14 of sect. 28 of 41 & 42 Vict. c. 26, in the Appendix.

Day of election.

52. The ordinary day of election of councillors shall be the first of November.

Returning officer at election.

53.—(1.) At an election of councillors for a whole borough the returning officer shall be the mayor (*a*).

(2.) At an election for a ward the returning officer shall be an alderman assigned for that purpose by the council at the meeting of the ninth of November (*b*).

(*a*) *See* sect. 67 as to course to be pursued when mayor is disqualified.

(*b*) The alderman was formerly chosen by the councillors of the ward. As to the 9th falling on a Sunday, *see* sect. 230.

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An action will lie against the mayor or the presiding officer for a breach of any duty imposed on him. (See *Pickering* v. *James*, L. R. 8 C. P. 489; 42 L. J. C. P. 217; *see* also *Woodward* v. *Sarsons*, L. R. 10 C. P. 733; 44 L. J. C. P. 293.)

Notice of election.

54. Nine days at least (*a*) before the day for the election of a councillor, the town clerk shall prepare and sign a notice thereof, and publish it by fixing it on the town hall (*b*), and, in the case of a ward election, in some conspicuous place in the ward.

(*a*) The nine days are exclusive of the day of the notice. As to Sunday, *see* sect. 230.

(*b*) *See* sect. 232 as to the place where this notice may be fixed.

Nomination of candidates.

55. The nomination of candidates for the office of councillor shall be conducted in accordance with the rules in Part II. of the Third Schedule.

Relation of nomination to election.

56.—(1.) If the number of valid nominations exceeds that of the vacancies, the councillors shall be elected from among the persons nominated.

(2.) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3.) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be re-elected to make up the required number.

(4.) If there is no valid nomination, the retiring councillors shall be deemed to be re-elected.

Publication of uncontested election.

57. If an election of councillors is not contested, the returning officer shall publish a list of the persons elected not later than eleven o'clock in the morning on the day of election.

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Mode of conducting poll at contested election. 35 & 36 Vict. c. 33.

58.—(1.) If an election of councillors is contested, the poll shall, as far as circumstances admit, be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and subject to the modifications expressed in Part III. of the Third Schedule, and to the other provisions of this Act, the provisions of the Ballot Act, 1872, relating to a poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of councillors.

(2.) Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies.

(3.) The poll shall commence at nine o'clock in the forenoon and close at four o'clock in the afternoon of the same day.

(4.) But if one hour elapses during which no vote is tendered, and the returning officer has not received notice that any person has within that hour been prevented from coming to the poll by any riot, violence, or other unlawful means, the returning officer may, if he thinks fit, close the poll at any time before four o'clock.

(5.) Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing.

(6.) Nothing in the Ballot Act, 1872, as applied by this Act, shall be deemed to authorise the appointment of any agents of a candidate at a municipal election; but if, in the case of a municipal election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer, one clear day before the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, shall, as far as regards that agent, apply in the case of that election.

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Questions which may be put to voters.

59.—(1.) At an election of councillors, the presiding officer shall, if required by two burgesses, or by a candidate or his agent (*a*), put to any person offering to vote, at the time of his presenting himself to vote (*b*), but not afterwards, the following questions, or either of them:

(*a.*) Are you the person enrolled in the burgess [*or* ward] roll now in force for this borough [*or* ward] as follows [*read the whole entry from the roll*]? (*c*)

(*b.*) Have you already voted at the present election [*add, in case of an election for several wards,* in this or any other ward]? (*d*)

(2.) The vote of a person required to answer either of these questions shall not be received until he has answered it (*e*).

(3.) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanor.

(4.) Save as by this Act authorized, no inquiry shall be permitted at an election as to the right of any person to vote.

(*a*) The presiding officer cannot put the questions of his own motion. There must be a request by two burgesses, *or a candidate or his agent.* The words in *italics* have been added, and render it unnecessary to have two burgesses in every polling department to represent each candidate.

(*b*) That is when he asks for a ballot paper. After the ballot paper has been handed to the burgess will be too late.

(*c*) For the provision of the Ballot Act, 1872, as to personation, *see* Appendix.

(*d*) For the provisions of the Ballot Act, 1872, as to the procedure when a second person offers to vote in the name of one who has already voted, *see* Appendix.

(*e*) That is, answered satisfactorily—the first question affirmatively, and the second negatively.

Election of Aldermen.

Time and mode of election of aldermen.

60.—(1.) The ordinary day of election of aldermen shall be the ninth of November (*a*), and the election shall be held at the quarterly meeting of the council (*b*).

(2.) The election shall be held immediately after the election of the mayor, or, if there is a sheriff, the appointment of the sheriff (*c*).

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(3.) An outgoing alderman, although mayor elect (*d*), shall not vote.

(4.) Every person entitled to vote may vote for any number of persons not exceeding the number of vacancies, by signing and personally delivering at the meeting to the chairman a voting paper containing the surnames and other names and places of abode and descriptions of the persons for whom he votes (*e*).

(5.) The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the town clerk to be kept for twelve months.

(6.) In case of equality of votes the chairman, although as an outgoing alderman or otherwise not entitled to vote in the first instance, shall have the casting vote.

(7.) The persons, not exceeding the number of vacancies, who have the greatest number of voters, shall be declared by the chairman to be, and thereupon shall be, elected (*f*).

(*a*) When the ninth falls on a Sunday, &c., the election must take place the next day. (*See* sect. 230.)

(*b*) If there is a special meeting of the council on the same day as the quarterly meeting, the election cannot be held at such meeting; but at the quarterly meeting at noon.

(*c*) The out-going aldermen are, however, entitled to vote in the election of the mayor and sheriff, and it makes no difference that an out-going alderman is the candidate. (*Reg.* v. *Maddy*, 11 A. & E. 869, 886.)

(*d*) The expression "mayor elect" is usually confined to the mayor who has been elected, but has not yet qualified. If an out-going alderman should be elected mayor, *and should take office*, it is presumed that he would form an integral part of the council and be entitled to vote.

(*e*) See sect. 241 as to misnomer and inaccurate description of any person or place in a voting paper and the notes thereon.

(*f*) The method of election here set forth must be strictly followed. There is a growing desire on the part of councils to enter upon a preliminary discussion, and with this view to propose in open council certain persons as candidates for the vacant chairs. The Act does not authorize any such procedure; but observations of a general character have been allowed, in some instances on a motion for the "adjournment of the hall," but this is a dangerous practice.

Election of Mayor.

Time and mode of election of mayor.

61.—(1.) The ordinary day of election of mayor shall be the ninth of November (*a*).

(2.) The election of mayor shall be the first business transacted at the quarterly meeting of the council on the day of election (*b*).

(3.) An outgoing alderman may vote, although the person for whom he votes is an alderman.

(4.) In case of equality of votes, the chairman, although not entitled to vote in the first instance, shall have the casting vote (*c*).

(*a*) *See* sect. 230.

(*b*) This is very definite, and the confirmation of the minutes of the last preceding council should be left until the mayor, sheriff, and aldermen have been elected.

(*c*) When the mayor is to be re-elected, a chairman should be appointed, as the mayor cannot preside at his own election. The general principle is stated in the following maxim, *Nemo debet esse judex in propriâ causâ.*

Election of Auditors and Assessors.

Time and mode of election of auditors and assessors.

62.—(1.) The ordinary day of election of elective auditors shall be the first of March, or such other day as the council, with the approval of the Local Government Board (*a*), from time to time appoint.

(2.) The ordinary day of election of revising assessors shall be the first of March (*b*).

(3.) If the election of elective auditors and that of revising assessors are held at the same time, then at the poll one voting paper only shall be used by any person voting. The names of the candidates for the respective offices shall be therein separate, and distinguished so as to show the office for which each is a candidate, and the provisions of the Ballot Act, 1872, shall be varied accordingly; but in the counting of the votes every voting paper shall be deemed to be a separate voting paper in respect of each office, and any objections thereto shall be considered and dealt with accordingly.

(4.) An elector shall not vote for more than one person to be elective auditor or revising assessor (*c*).

(5.) Elections of elective auditors and of revising assessors shall be held at the town hall or some one other convenient place appointed by the mayor.

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(6.) Save as in this section provided, all the provisions of this Act with respect to the nomination and election of councillors for a borough not having wards shall apply to the nomination and election of elective auditors and revising assessors (*d*).

(*a*) The power to alter the day of election with the consent of the Local Government Board has been acted on in some boroughs; but where there are revising assessors to be elected, it is not advisable to alter the day.

(*b*) *See* sect. 230 when this day falls on a Sunday, &c.

(*c*) This provision secures a representative to the minority. It is very seldom that there is a contested election for these officers, since one party must have an enormous preponderance to be able to carry both candidates when each burgess can only vote for one candidate.

(*d*) The number of compartments at such an election will be very much less than at an election for councillors.

Supplemental and Exceptional Provisions.

Right of women to vote.

63. For all purposes connected with and having reference to the right to vote at municipal elections words in this Act importing the masculine gender include women (*a*).

(*a*) *See* Preface.

The 32 & 33 Vict. c. 55, s. 9, which enacts that in the Municipal Corporations Acts words importing the masculine gender shall include females for all purposes connected with the right to vote at the election of councillors, auditors, and assessors, has reference only to the disability of women by reason of sex, and has no reference to the disability by reason of the status of coverture. And the Married Women's Property Act (33 & 34 Vict. c. 93) has no reference to the political disabilities of married women. It was held, therefore (on a rule for a *quo warranto* against a town councillor who had been elected by a majority of one), that a married woman, though qualified by occupation and payment of rates, and put on the burgess list, cannot vote at the election of town councillors. It follows that a woman who is rightly on the burgess list, but married before the election, is also disqualified from voting. (*Reg.* v. *Harrald*, L. R. 7 Q. B. 361.) It seems, therefore, that the Married Women's Property Act, 1882, does not increase a woman's political rights.

Polling districts.

64. The council may divide the borough or any ward into polling districts, and thereupon the overseers shall, as far as practicable, make out the parish burgess lists so as to divide the names in conformity with the polling districts.

Sect. 65.

Notices as to elections.

65. Any notice required to be given in connexion with a municipal election may, as to elective auditors and revising assessors, be comprised in one notice, and may, as to ward elections, comprise matter necessary for several wards.

Time for filling casual vacancies.

66.—(1.) On a casual vacancy in a corporate office, the election shall be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses.

(2.) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk (*a*).

(3.) In other cases the day of election shall be fixed by the mayor (*b*).

(*a*) The language of this sub-section differs from that of the next; but as the town clerk must sign the notice of meeting, it is certain that he must also fix the date thereof.

(*b*) As to the notice to be given of the election of a councillor, *see* sect. 54.

Illness, &c., of mayor or returning officer.

67.—(1.) If the mayor is dead, or is absent or otherwise incapable of acting in the execution of his powers and duties as to elections under this Act, the council shall forthwith choose an alderman to execute those powers and duties in the place of the mayor (*a*).

(2.) In case of the illness, absence, or incapacity to act of the alderman assigned to be returning officer at a ward election, the mayor may appoint to act in his stead another alderman, or, if the number of aldermen does not exceed the number of wards, a councillor not being a councillor for that ward, and not being enrolled in the ward roll for that ward.

(*a*) If the mayor were dead a casual vacancy would occur, and would be filled under the preceding section. The council meeting to appoint an alderman to execute those powers and duties which the mayor, on account of his absence or incapacity, cannot execute, must be duly convened in the prescribed manner.

Sect. 36 of the Act of 1835, contained similar enactments to those in this Act. The following case arose thereon:

In a borough not divided into wards, the mayor being returning

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officer, offered himself for re-election as town councillor, and the council elected one of the aldermen to act at the election in the place of the mayor:—It was *held* that the mayor was not disqualified as a candidate, but could not act as returning officer; that he was incapable of acting within the meaning of the section; and, consequently, that the appointment of the alderman as substitute and the election were valid. (*Reg.* v. *White*, L. R. 2 Q. B. 418.)

Election of councillor in more than one ward.

68. If a person is elected councillor in more than one ward, he shall, within three days after notice thereof (*a*), choose, by writing signed by him and delivered to the town clerk, or in his default the mayor shall, within three days after the time for choice has expired, declare, for which of those wards he shall serve, and the choice or declaration shall be conclusive.

(*a*) *See* sect. 34, and the notes thereon.

Elections not in churches.

69. A municipal election shall not be held in any church, chapel, or other place of public worship (*a*).

(*a*) A school-room under a chapel and forming part of the chapel premises, and used for religious worship by Sunday-school scholars and their teachers, would probably come within this section.

Omission to hold election, or election void.

70.—(1.) If a municipal election is not held on the appointed day or within the appointed time, it may be held on the day next after that day or the expiration of that time.

(2.) If a municipal election is not held on the appointed day or within the appointed time, or on the day next after that day or the expiration of that time, or becomes void, the municipal corporation shall not thereby be dissolved or be disabled from electing, but the High Court may, on motion, grant a *mandamus* for the election to be held on a day appointed by the court.

(3.) Thereupon public notice of the election shall, by such person as the court directs, be fixed on the town hall, and shall be kept so fixed for at least six days before the day appointed for the election, and in all other respects the election shall be conducted as directed by this Act respecting ordinary elections.

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Burgess roll to be in operation until revision of new burgess roll.

71.—(1.) If a parish burgess list is not made or revised in due time, the corresponding part of the burgess roll in operation before the time appointed for the revision shall be the parish burgess list until a burgess list for the parish has been revised and become part of the burgess roll.

(2.) If a burgess roll is not made in due time, the burgess roll in force before the time appointed for the revision shall continue in force until the new burgess roll is made.

Non-compliance with rules.

72. An election shall not be invalidated by non-compliance with the rules in the Third Schedule, or mistake in the use of the forms in the Eighth Schedule, if it appears to the court having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of this Act (*a*).

(*a*) An election is to be declared void by the common law applicable to parliamentary elections if it has been so conducted that the tribunal which is asked to avoid it is satisfied, as matter of fact, either that there was no real election at all, or that the election was not really conducted under the subsisting election laws—that is, that the constituency have not, in fact, had a fair and free opportunity of electing the candidate which the majority might prefer, or that there is reasonable ground to believe that a majority of the electors may, by reason of irregularities in the mode of conducting the election, have been prevented from electing the candidate they preferred. To render an election void under the Ballot Act by reason of a non-observance of or non-compliance with the rules or forms given therein, such non-observance or non-compliance must be so great as to satisfy the tribunal before which the validity of the election is contested that the election has been conducted in a manner contrary to the principle of an election by ballot, and that the irregularities complained of did affect or might have affected the result of the election. (*Woodward* v. *Sarsons*, L. R. 10 C. P. 733 ; 32 L. T. R. (N.S.) 867.) A candidate at a municipal election was twice nominated, one nomination being good, but the other being bad. His name appeared in the ballot papers twice, once in respect of each nomination. Seventy-one voters appended their marks to his name under one nomination, and 301 under the other. All the voters so voting intended to vote for the candidate, and if both classes of voters could be added together he had a majority, and was entitled to be returned. It was *held*, that having been duly nominated, and having a majority of votes, he was entitled to be returned. (*Northcote* v. *Pulsford*, L. R. 10 C. P. 476.)

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At the annual election for the town of N., the town clerk issued a notice in the prescribed form, stating the last day for the delivery of nomination papers to be Saturday, the 23rd of October. This did not leave seven clear days between that day and the day of election, November 1st. Some nomination papers were delivered on Friday, the 22nd, and others on the Saturday following. *Held*, that the notice published by the town clerk being so defective as to be calculated in the opinion of the court to mislead the candidates and so prevent a fair election, the whole proceeding must be declared void, and a new election ordered. (*Howes* v. *Turner*, L. R. 1 C. P. D. 670.)

Election valid unless questioned within twelve months.

73. Every municipal election not called in question within twelve months after the election, either by election petition or by information in the nature of a *quo warranto*, shall be deemed to have been to all intents a good and valid election (*a*).

(*a*) See *Ex parte Birkbeck*, L. R. 9 Q. B. 256. In this case BLACKBURN, J., decided that an alderman became disqualified when he ceased to occupy, and that the twelve months under sect. 23 of 7 Will. 4 and 1 Vict. c. 73, began to run from that time, and not from the time when he ceased to be on the burgess roll. The text in the Act has slightly altered the law. In the case last quoted, however, BLACKBURN, J., said "the party may still run the risk of penalties if he acts while disqualified."

Offences in relation to nomination papers.

74.—(1.) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the town clerk any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanor, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2.) An attempt to commit any such offence shall be punishable as the offence is punishable.

Offences in relation to lists and elections.

75.—(1.) If a mayor or revising assessor neglects or refuses to revise a parish burgess list, or a mayor or alderman neglects or refuses to conduct or declare an election, as required by this Act, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

(2.) If—

(*a*.) An overseer neglects or refuses to make, sign, or

deliver a parish burgess list, as required by this Act; or

(*b.*) A town clerk neglects or refuses to receive, print, and publish, a parish burgess list or lists of claimants or respondents, as required by this Act; or

(*c.*) An overseer or town clerk refuses to allow any such list to be inspected by a person having a right thereto;

he shall for every such neglect or refusal be liable to a fine not exceeding fifty pounds, recoverable by action (*a*).

(3.) An action under this section shall not lie after three months from the neglect or refusal. A moiety of any fine recovered therein shall, after payment of the costs of action, be paid to the plaintiff.

(*a*) See *King* v. *Burrell*, 12 A. & E. 460; 4 P. & D. 207; *King* v. *Shore*, 3 Q. B. 31; 2 G. & D. 453; *Clarke* v. *Gant*, 8 Exch. 252; *Hunt* v. *Hibbs*, 29 L. J. Ex. 222; *Harwich* (*Mayor, &c., of*) v. *Grant*, 5 E. & B. 182.

It would seem that the town clerk should see that there is a perfect list exposed every morning under Rule 7 of Part I. Sched. III. to avoid this penalty. (*R.* v. *Rochester* (*Mayor, &c., of*), 7 E. & B. 910, 923; E. B. & E. 1024.)

Revival of former law on expiration of Ballot Act.

76. (1.) If the Ballot Act, 1872, ceases to be in force, so much of this Act as directs that the poll at a contested election of councillors shall be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and as applies provisions of the Ballot Act, 1872, to a poll at a contested election of councillors, shall forthwith cease to be in force, and thereupon the enactments in Part IV. of the Third Schedule shall revive and be in force.

(2.) But this cesser and revivor shall not affect any act done, right acquired, or liability or fine incurred, or the institution or prosecution to its termination of any proceeding in respect of any such right, liability, or fine.

PART IV.

Corrupt Practices and Election Petitions.

Corrupt Practices.

Sect. 77. Definitions.

77. In this Part—

"Bribery," "treating," "undue influence" (*a*), and "personation" (*b*), include respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections:

"Corrupt practice" means bribery, treating, undue influence, or personation:

"Candidate" means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office:

"Canvasser" means any person who solicits or persuades, or attempts to persuade, any person to vote or to abstain from voting at a municipal election, or to vote or to abstain from voting for a candidate at a municipal election:

"Voter" means a burgess or a person who votes or claims to vote at a municipal election:

"Election court" means a court constituted under this Part for the trial of an election petition:

"Municipal election petition" or "election petition" means a petition under this Part complaining of an undue municipal election:

31 & 32 Vict. c. 125.

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868:

"Prescribed" means prescribed by general rules made under this Part:

"Borough" and "election" when used with reference to a petition mean the borough and election to which the petition relates. Sect. 77.

(*a*) "Bribery," "treating," and "undue influence" are defined by the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), set out in the Appendix.

(*b*) "Personation" is defined by the Ballot Act, 1872 (35 & 36 Vict. c. 33), set out in the Appendix.

78. A person guilty of a corrupt practice at a municipal election shall be liable to the like actions, prosecutions, penalties, forfeitures, and punishments as if the corrupt practice had been committed at a parliamentary election (*a*). General penalties for corrupt practices.

(*a*) *See* the Parliamentary Elections Act, 1868, and 31 & 32 Vict. c. 125, in the Appendix.

79.—(1.) Where it is found by the report of an election court that a corrupt practice has been committed by or with the knowledge and consent of a candidate at a municipal election, that candidate shall be deemed to have been personally guilty of a corrupt practice at the election, and his election, if he has been elected, shall be void; and he shall (whether elected or not) during seven years from the date of the report, be subject to the following disqualifications: Disqualifications and avoidance of election for practices by candidates.

He shall be incapable of—

(*a.*) Holding or exercising any corporate office or municipal franchise, or being enrolled or voting as a burgess:

(*b.*) Acting as a justice or holding any judicial office:

(*c.*) Being elected to or sitting or voting in parliament:

(*d.*) Being registered or voting as a parliamentary voter:

(*e.*) Being employed by a candidate in a parliamentary or municipal election:

(*f.*) Acting as overseer or as guardian of the poor.

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(2.) If any person is on indictment or information found guilty of a corrupt practice at a municipal election, or is in any action or proceeding adjudged to pay a penalty or forfeiture for a corrupt practice at a municipal election, he shall, whether he was a candidate at the election or not, be subject during seven years from the date of the conviction or judgment to all the disqualifications mentioned in this section.

(3.) If after a person has become disqualified under this Part any witness on whose testimony he has become disqualified is, on his prosecution, convicted of perjury in respect of that testimony, the High Court may, on motion, and on proof that the disqualification was procured by means of that perjury, order that the disqualification shall cease.

Disqualifications and avoidance of election for corrupt practices by agents, and for offences against this Part.

80. If it is found by an election court that a candidate has by an agent been guilty of a corrupt practice at a municipal election, or that any offence against this Part has been committed at a municipal election by a candidate, or by an agent for a candidate with the candidate's knowledge and consent, the candidate shall during the period for which he was elected to serve, or for which, if elected, he might have served, be disqualified for being elected to and for holding any corporate office in the borough, and if he was elected his election shall be void.

Avoidance of election for general corruption.

81. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election.

Paid agents and canvassers.

82.—(1.) A burgess of a borough shall not be retained or employed for payment or reward by or on behalf of a candidate at a municipal election for that borough or any ward thereof as a canvasser for the purposes of the election (*a*).

(2.) If any person is retained or employed in contravention of this prohibition, that person and also the person by whom he is retained or employed shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.

(3.) An agent or canvasser retained or employed for payment or reward for any of the purposes of a municipal election shall not vote at the election, and if he votes he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.

(*a*) This disposes of the question arising on the repealed provisions whether a burgess on the register for one ward could be a paid canvasser for a candidate in another ward. (*Maude* v. *Lowley*, L. R. 9 C. P. 165.)

Payment for conveyance of voters.

83. If a candidate or an agent for a candidate pays or agrees to pay any money on account of the conveyance of a voter to or from the poll, he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding five pounds.

Prosecutions for corrupt practices.

84.—(1.) The costs and expenses of a prosecutor and his witnesses in the prosecution of any person for bribery, undue influence, or personation at a municipal election, with compensation for trouble and loss of time, shall, unless the court otherwise directs, be allowed, paid, and borne as in cases of felony (*a*).

(2.) The clerk of the peace of the borough, or, if there is none, of the county in which the borough is situate, shall, if so directed by an election court, prosecute any person for bribery, undue influence, or personation at the election in respect of which the court acts, or sue or proceed against any person for penalties for bribery, treating, undue influence, or any offence against this Part at the election.

(*a*) The manner in which these costs are to be paid is mentioned in sect. 169.

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Striking off votes.

85. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny.

Personation.

86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election (*a*).

(*a*) *See* the Parliamentary Registration Act, 1843, and the Ballot Act, 1872, in the Appendix.

Election Petitions.

Power to question municipal election by petition.

87.—(1.) A municipal election may be questioned by an election petition on the ground—

(*a.*) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation; or

(*b.*) That the election was avoided by corrupt practices or offences against this Part committed at the election; or

(*c.*) That the person whose election is questioned was at the time of the election disqualified; or

(*d.*) That he was not duly elected by a majority of lawful votes.

(2.) A municipal election shall not be questioned on any of those grounds except by an election petition (*a*).

(*a*) In the case of *Yates* v. *Leach* (L. R. 9 C. P. 605), upon the corresponding Act of Parliament now repealed, BRETT, J., said:—It appears that the only way in which under the Act of Parliament an election can be rid of and the office vacated, so that a new election may be held, is by election petition. (*See* also *Reg.* v. *Mayor of Welchpool*, 35 L. T. (N.S.) 594, referred to in note to sect. 225.)

Presentation of petition.

88.—(1.) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election.

(2.) Any person whose election is questioned by the petition, and any returning officer of whose conduct a

petition complains, may be made a respondent to the petition (*a*). Sect. 88.

(3.) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough.

(4.) It shall be presented within twenty-one days (*b*) after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices, and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

(*a*) At a municipal election A. B. and C. coalesced for the purpose of canvassing the burgesses. A. and B. were elected; C. was not. A petition was presented against the return of A. and B., and C. was joined as a respondent. At the trial C. by his counsel objected to be a respondent, but the commissioner allowed the trial to proceed upon the petition as presented, and in the result he found that A. had been guilty of personal bribery, and that B. and C. had been guilty of bribery through their agents. Upon a special case stated for the opinion of the court, it was *held* that C. was not properly made a respondent (*Lovering* v. *Dawson*, L. R. 10 C. P. 711). At a municipal election A. and B. were candidates for the office of town councillor. A. obtained a majority of thirty-five votes over B., and was declared elected, but being disqualified refused to serve. B. thereupon claimed to have been elected, and having made the requisite declaration, acted on several occasions as town councillor. A petition being presented under the Corrupt Practices (Municipal Elections) Act, 1872, to which both A. and B. were made respondents, they both gave notice under sect. 18 of the Act of their intention not to oppose the petition. No notice of A.'s disqualification was given to the electors before the election. On an application by B. to the court that his name might be struck out of the petition, the court refused the application on the ground that he was properly made a respondent (*Yates* v. *Leach*, L. R. 9 C. P. 605).

In *Harmon* v. *Park*, 44 L. T. (N.S.) 82, it was decided that "re-

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turning officer" means a person under whatever designation presiding at an election. In a borough divided into wards the candidate for the office of town councillor was misdescribed on the burgess roll. The mayor decided that he was disqualified, and his opponent was thereupon duly declared elected. The disqualified candidate presented a petition against the election, making the mayor respondent. *Held* by the Court of Appeal that the petition did not complain of the mayor's conduct within the corresponding section of the repealed Act, and that therefore he was wrongly made a respondent, and his name must be struck out. The LORD CHANCELLOR and BRETT, L. J., said that the mayor was not in such a case the returning officer.

(*b*) A petition against the election of a town councillor cannot, after the expiration of the twenty-one days limited for its presentation, be amended by the introduction of a substantially new charge. The petition, as originally framed, complained of the employment, as paid canvassers, at an election for the north ward of the borough, of persons who were on the register of burgesses for *that ward*. The petitioners after the expiration of the twenty-one days sought to amend the petition by adding "and other wards." *Held*, that the court (or a judge) had no power to allow the proposed amendment (*Maude* v. *Lowley*, L. R. 9 C. P. 165).

Security for costs.

89.—(1.) At the time of presenting an election petition or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2.) The security shall be to such amount, not exceeding five hundred pounds (*a*), as the High Court, or a judge thereof, on summons, directs, and shall be given in the prescribed manner, either by a deposit of money, or by recognisance entered into by not more than four sureties, or partly in one way and partly in the other.

(3.) Within five days (*b*) after the presentation of the petition the petitioner shall in the prescribed manner serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition.

(4.) Within five days after service of the notice the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the same.

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(5.) An objection to a recognisance shall be decided in the prescribed manner.

(6.) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.

(7.) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

(*a*) Formerly security was limited to £500 absolutely, and stood in the way of persons desirous of presenting a petition. The power given to a judge to direct that security shall be given for a smaller amount will be found of considerable use.

(*b*) It is a condition precedent to the trial of a municipal election petition that, within five days after the presentation of it, the petitioner should in the prescribed manner serve on the respondent a notice of the presentation and of the nature of the proposed security, and a copy of the petition. (*Williams* v. *Mayor of Tenby*, L. R. 5 C. P. D. 135.)

Petition at issue.

90. On the expiration of the time limited for making objections, or, after objection made, on the objection being disallowed or removed, whichever last happens, the petition shall be at issue.

Municipal election list.

91.—(1.) The prescribed officer shall as soon as may be make a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner.

(2.) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3.) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this Part the petition shall be deemed to be a separate petition against each respondent.

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(4.) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

Constitution of election court.

92.—(1.) An election petition shall be tried by an election court consisting of a barrister qualified and appointed as in this section provided, without a jury.

(2.) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years' standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3.) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister.

(4.) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions; and those judges or two of them shall forthwith determine the number of barristers, not exceeding five at any one time, necessary to be appointed for the trial of the election petitions at issue, and shall appoint that number accordingly as commissioners under this Part, and shall assign the petitions to be tried by each.

(5.) If a commissioner to whom the trial of a petition is assigned, dies, or declines, or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(6.) The election court shall for the purposes of the trial have the same powers and privileges as a judge on

the trial of a parliamentary election petition (*a*), except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit.

(*a*) On the trial of a parliamentary election petition a judge has the same powers, jurisdiction, and authority as a judge of one of the superior courts and as a judge of assize and nisi prius, and the court held by him is a court of record. (31 & 32 Vict. c. 125, s. 29.)

Trial of election petition.

93.—(1.) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial.

(2.) The place of trial shall be within (*a*) the borough, except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(3.) The election court may in its discretion adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held.

(4.) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5.) Where a charge is made in a petition of any corrupt practice or offence against this Part having been committed at the election, the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows:

(*a.*) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence;

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(*b.*) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part;

(*c.*) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof.

(6.) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(7.) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final (*b*).

(8.) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at nisi prius.

(9.) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10.) On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.

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(11.) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.

(12.) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision, shall be sent by the High Court to the Secretary of State.

(13.) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.

(*a*) "Within the borough," that is within the ambit or limits of the borough for ordinary purposes. This appears to be only directory, and intended to point out where, for purposes of convenience, the trial shall be held. A *Shire Hall*, topographically within a borough, but excluded by charter from the borough, and constituted part of the adjoining county, has been considered for the purposes of this section to be within the borough.

(*b*) Although the decision of the Statutory Court on a special case stated for the purpose of deciding a municipal election petition is final, an appeal lies from the decision of the court as to whether the person is rightly made a respondent in such petition. (See *Harmon* v. *Park*, 44 L. T. (N.S.) 82.

See sect. 14 of the Judicature Act, 1881 (44 & 45 Vict. c. 68), as to the jurisdiction of the High Court to decide questions of law upon appeal or otherwise under the Parliamentary Registration Act, the Corrupt Practices (Municipal Elections) Act, 1881, *or any Act amending the same.*

Witnesses.

94.—(1.) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and shall be liable to the same penalties for perjury.

(2.) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.

(3.) The court may examine any person so required to attend or being in court although he is not called and examined by any party to the petition.

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(4.) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them.

(5.) A witness on an election petition shall not be excused from answering any question relating to a corrupt practice or offence against this Part committed at or connected with the election on the ground that the answer thereto may criminate or tend to criminate him; but if he answers it he shall be entitled to receive from the court a certificate stating that he was on his examination required by the court to answer questions the answers whereto criminated or tended to criminate him, and that he answered all such questions (*a*).

(6.) If any information, indictment, or action is at any time thereafter pending against the witness in any court for any corrupt practice or offence against this Part committed at or in relation to the election before the time of his giving his evidence, that court shall, on production and proof of the certificate, stay the proceedings, and may, in its discretion, award to him such costs as he has been put to therein.

(7.) The giving of or refusal to give any such certificate by the election court shall be final and conclusive (*b*).

(8.) A statement made by any person in answer to a question put to him by or before an election court shall not, except in cases of indictment for perjury, be admissible in evidence in any proceeding, civil or criminal (*c*).

(9.) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.

(*a*) The defendant was examined as a witness before the commissioners appointed to enquire into the existence of corrupt practices at an election of members to serve in Parliament for the city of *N.*,

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and received from the commissioners a certificate under sect. 7 of 26 & 27 Vict. c. 29, which certified that the defendant was sworn and examined on oath before the commissioners, "and upon such examination was required by us to answer questions, his answers to which criminated or tended to criminate him, and answered all such questions, but divers of his said answers to the said questions were unsatisfactory to us, and we believe were false, and false to his knowledge." The defendant was afterwards convicted on a prosecution for bribery, and obtained a rule to stay proceedings under sect. 7. It was *held*, that the defendant, to entitle him to a certificate, must make true answers to all questions; that the commissioners had in effect refused to certify that the defendant's answers were true, and that the certificate was not such as sect. 7 required, and did not operate as a stay of proceedings. (*Reg.* v. *Hulme*, L. R. 5 Q. B. 377.)

(*b*) At a parliamentary election it was held that if a witness has in point of fact answered all questions he is entitled to a certificate. (*Reg.* v. *Price*, L. R. 6 Q. B. 411.)

(*c*) In the case of *Reg.* v. *Saltor*, L. R. 8 Q. B. D. 267, it was decided that an ex-officio information by the Attorney-General for perjury was not within the proviso of sect. 7 of the Corrupt Practices Prevention Act, 1863. The proviso is as follows:—"Provided that no statement made by any person in answer to any question put by or before such commissioners shall, except in cases of indictments for perjury, be admissible in any proceeding, civil or criminal." Distinction was drawn in the case between indictment and information.

Withdrawal of petition.

95.—(1.) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner and at the prescribed time and place.

(2.) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough.

(3.) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.

(4.) If the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

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(5.) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution.

(6.) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7.) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8.) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

Abatement of petition.

96.—(1.) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2.) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3.) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.

(4.) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

Withdrawal and substitution of respondents.

97.—(1.) If before the trial of an election petition a respondent other than a returning officer—

(*a.*) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; or

(*b.*) Gives the prescribed notice that he does not intend to oppose the petition;

the prescribed notice thereof shall be given in the borough,

and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three.

(2.) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon (*a*).

(*a*) In *Yates* v. *Leach*, L. R. 9 C. P. 605, a respondent had given notice of his intention not to oppose, and applied to the court to have his name struck out of the petition. The court refused the application on the ground that he was properly made a respondent.

Costs on election petitions.

98.—(1.) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines; and in particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful (*a*).

(2.) The costs may be taxed in the prescribed manner, but according to the same principles as costs between solicitor and client in an action in the High Court, and may be recovered as the costs of such an action, or as otherwise prescribed (*b*).

(3.) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the

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demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognisance relating to the petition shall be held to have made default in the recognisance, and the prescribed officer shall thereon certify the recognisance to be forfeited, and it shall be dealt with as a forfeited recognisance relating to a parliamentary election petition (*c*).

(*a*) The costs of and incidental to a petition under the repealed but corresponding provisions of the Corrupt Practices (Municipal Elections) Act, 1872, are in the sole and absolute discretion of the commissioner who tries the petition, and his decision cannot be reviewed by the superior court, howsoever flagrantly wrong it may be. P., an unsuccessful candidate at a municipal election, having been joined as a respondent in a petition against the return of the successful candidates, a case was stated for the opinion of the court as to whether or not he had been properly made a respondent; and the commissioner ordered that, in the event of the court being of opinion that he was improperly so joined, P. was to receive his costs from the petitioner. The court having decided in favour of P., it was *held*, that having made him a respondent it was not competent to the petitioner to say that P. was not properly "a party to the petition," and therefore not entitled to costs. (*Lovering* v. *Dawson* (No. 2), L. R. 10 C. P. 726.)

(*b*) The court will not interfere with the discretion of the master as to the amount allowed for counsels' fees and refreshers unless it be manifest that he has failed to exercise it in a reasonable manner. (*Hargreaves* v. *Scott*, L. R. 4 C. P. D. 21.)

(*c*) The Parliamentary Elections Act, 1868, s. 42, provides that recognisances, when forfeited, shall be dealt with in manner provided by the Act of the 3rd year of the reign of King George the Fourth, c. 46.

Reception of and attendance on the election court.

99.—(1.) The town clerk shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate (*a*).

(2.) All chief and head constables, superintendents of police, head-boroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3.) The election court may employ officers and clerks as prescribed.

(4.) A shorthand writer shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court (*b*).

(*a*) *See* Part II. of the 5th Schedule. These expenses cannot be paid by the treasurer without an order of the council, although the town clerk has no option as to incurring them.

(*b*) The employment of a shorthand writer is imperative. The expenses attending such employment are often very great, sometimes £100 to £200. The Government Bill of 1878 contained a clause authorising the High Court of Justice or a judge at chambers to make an order dispensing with the attendance of the shorthand writer at the whole or any part of the trial. This was such an alteration of the law as could not be properly made in a Consolidation Bill, and was, therefore, abandoned.

Rules of procedure and jurisdiction.

100.—(1.) The judges for the time being on the rota for the trial of parliamentary election petitions, may from time to time make, revoke, and alter General Rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon (*a*).

(2.) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3.) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary elec-

Sect. 100. tion petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4.) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction.

(5.) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court.

(6.) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section.

(*a*) *See* the present rules in Appendix.

Expenses of election court.

101.—(1.) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury, on their certificate, out of the borough fund or borough rate (*a*).

(2.) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk for receiving the election court, shall be repaid, wholly or in part, to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely):

(*a*.) When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner;

(*b*.) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3.) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs; but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied.

(*a*) Upon the trial of a petition against the return of a borough councillor under the Corrupt Practices (Municipal Elections) Act, 1872, the barrister in delivering judgment said that he found the councillor guilty of personal bribery, and that all the costs of the enquiry were to be borne by him, and made an order in writing for the payment by the councillor of certain costs under sect. 19 of the Act. The written order made no provision for the remuneration and allowances to the barristers and other persons under sect. 22. The Lords Commissioners of the Treasury paid the amount of such remuneration and allowances, and certified the payment to the borough treasurer, and required him to pay them the amount out of the borough fund or rates, as provided by sect. 22. A rate was accordingly made and levied. The commissioners afterwards, on receiving from the barrister a letter that he had always intended to visit all the costs upon the councillor, and had said so in giving judgment, cancelled their certificate, and the corporation abandoned their rate, and returned the sums levied to the ratepayers. Afterwards the commissioners, finding that the barrister had made no written order for the payment of the remuneration and allowances under sect. 22, issued a fresh certificate requiring the borough treasurer to repay them out of the borough fund or rates the amount of such remuneration and allowances. These facts being raised upon the return to a *mandamus* commanding the treasurer to repay the commissioners out of the borough fund or rate, and the corporation to cause such payment:—

Held, that no valid order was made by the barrister for the payment of such allowances and remuneration under sect. 22; that the election court for the trial of petitions under the Act was by virtue of sect. 14, sub-sect. 5, a court of record, and that neither the Queen's Bench Division nor the Court of Appeal, on the return to the *mandamus*, could amend the barrister's order so as to make it include the payment of such remuneration and allowances; that the act of the commissioners in certifying was not a judicial act, and that they had the power to make the second certificate; and were entitled to a peremptory *mandamus* compelling the treasurer to repay to them the amount of such remuneration and allowances out of the borough

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fund or rate, and compelling the corporation to order such amount to be levied by a borough rate. (*Reg.* v. *The Mayor of Maidenhead*, L. R. 9 Q. B. D. 494.

Acts done pending a petition not invalidated.

102. Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

Provisions as to elections in the room of persons unseated on petition.

103. Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy (*a*); and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

(*a*) As to a casual vacancy, *see* sect. 40. By sect. 66, a casual vacancy is to be filled up within fourteen days after notice of the vacancy from two burgesses.

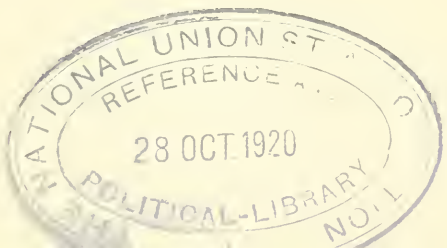
Is there a vacancy until the certificate mentioned in sub-sect. 13 of the 93rd sect. has been forwarded to the town clerk?

Acts done by a person who has been elected, in the execution of his office, are valid until such certificate is certified to the town clerk. (*See* sect. 102.)

In practice the office is not regarded as vacant until the receipt by the town clerk of the judge's certificate and declaration.

Prohibition of disclosure of vote.

104. A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.



PART V.

CORPORATE PROPERTY AND LIABILITIES.

Corporate Land.

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Power to purchase land for town hall, &c.

105. A municipal corporation may contract for the purchase of and hold any land not exceeding in the whole five acres (*a*), either in or out of the borough, and thereon, or on any land belonging to or held in trust for the corporation, may build a town hall, council house, justices' room, with or without a police station and cells, or lock-ups, or a quarter and petty sessions-house, or an assize court-house, with or without judges' lodgings, or a polling station, or any other building necessary or proper for any purpose of the borough (*b*).

(*a*) Generally speaking, corporations are prohibited from holding lands except by license from the Crown. Many corporations have charters enabling them to hold lands notwithstanding the statutes of mortmain. Where a corporation has no such charter the council cannot purchase land under this section for any other than the purposes mentioned, and then not more than the five acres, except under sect. 107, by consent of the Treasury.

(*b*) This section considerably enlarges the powers of a council. Most of the large towns have already secured these powers by local acts.

As to when income tax is payable in respect of public buildings, see *Coomber* v. *The Justices of Berks*, L. R. 9 Q. B. D. 17; 44 L. T. (N.S) 687; *The Mersey Docks* v. *Lucas*, 44 L. T. R. (N.S.) 645.

As to the rating of municipal property, see *Jones* v. *Mersey Docks Board*, 11 H. L. C. 443; *Mayor of Lincoln* v. *Holmes Common*, L. R. 2 Q. B. 482; *Reg.* v. *Mayor of Oldham*, L. R. 3 Q. B. 474; *Chorlton Overseers* v. *Chorlton Union*, vol. xlvi. J. P. 535.

Power to borrow with approval of Treasury.

106. The council may, with the approval of the Treasury, borrow at interest on the security of any corporate land, or of any land proposed to be purchased by the council under this Act, or of the borough fund or borough rate (*a*), or of all or any of those securities, such sums as the council from time to time think requisite for the purchase of land, or for the building of any building which the council are by this Act authorized to build (*b*).

(*a*) By sect. 140, the payments specified in Part I. of the 5th Schedule are to be made out of the borough funds. Among the

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payments therein specified are :—"All expenses charged on the borough fund by any Act of Parliament or otherwise, and all other expenses necessarily incurred in carrying this Act into force." (*See* also sect. 112.)

(*b*) The council can also borrow for the purposes of buildings, and repairing, improving, and fitting up such buildings, from the Public Works Loan Commissioners. (*See* sect. 120.)

Power to acquire land with the approval of the Treasury.

107.—(1.) Where a municipal corporation has not power to purchase or acquire land, or to hold land in mortmain, the council may, with the approval of the Treasury, purchase or acquire any land in such manner and on such terms and conditions as the Treasury approve, and the same may be conveyed to and held by the corporation accordingly.

8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106. 32 & 33 Vict. c. 18.

(2.) The provisions of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, relating to the purchase of land by agreement, and to agreements for sale and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein, by persons under disability, shall extend to all purchases of land under this section.

Restrictions on alienation of corporate land without approval of Treasury.

108.—(1.) The council shall not, unless authorized by Act of Parliament (*a*), sell, mortgage, or alienate any corporate land without the approval of the Treasury.

(2.) The council shall not, unless authorized by Act of Parliament, lease or agree to lease any corporate land without the approval of the Treasury, except as follows :

(*a.*) They may make a lease or agreement for a lease for a term not exceeding thirty-one years from the date of the lease or agreement, so that there be reserved and made payable during the whole of the term such clear yearly rent as to the council appears reasonable, without any fine.

(*b.*) They may make a lease or agreement for a lease for a term not exceeding seventy-five years from the date of the lease or agreement, and either at a reserved rent or on a fine, or both, as the council think fit,—

(i.) Of tenements or hereditaments, the greater part of

the yearly value of which, at the date of the lease or agreement, consists of any building or buildings; or

(ii.) Of land proper for the erection of any houses or other buildings thereon, with or without gardens, yards, curtilages, or other appurtenances to be used therewith; or

(iii.) Where the lessee or intended lessee agrees to erect a building or buildings thereon of greater yearly value than the land,—of land proper for gardens, yards, curtilages, or other appurtenances to be used with any other house or other building erected or to be erected on any such land, belonging either to the corporation or to any other proprietor, or proper for any other purpose calculated to afford convenience or accommodation to the occupiers of any such house or building.

(*a*) The 10th section of the 35 & 36 Vict. c. 68, authorizes the council to transfer to a Secretary of State any land held for the public uses of the borough for the purposes of that Act.

Power to dispose of land with approval of Treasury.

109. The council may, with the approval of the Treasury (*a*), dispose of any corporate land either by way of absolute sale, or by way of exchange, mortgage, charge, demise, lease, or otherwise, in such manner and on such terms and conditions as the Treasury approve (*b*).

(*a*) Notice of intended application to be fixed on the town hall. (*See* sect. 236.) There is no provision as to the way in which the consent of the Treasury may be given. It has hitherto been given by two of the commissioners being made parties and executing the document, carrying into effect the transaction. The Treasury have announced their intention to give their consent under this Act as heretofore by two of their lordships being made parties to the deed.

(*b*) It is usual for the council to lay out building estates and make the roads, &c., in the same way in which other owners of land deal with them. The Treasury have consented to a council borrowing on mortgage the costs thus incurred.

Council may renew leases, &c.

110. In the following cases,—

(*a.*) Where a body corporate of a borough was on the fifth of June one thousand eight hundred and

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thirty-five bound or engaged by any covenant or agreement, expressed or implied, or was enjoined by any deed, will, or other document, or was sanctioned or warranted by ancient usage or by custom or practice, to make any renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, and years determinable after the lapse of any number of years, at a fine certain, or under any special or specific terms or conditions:

(*b.*) Where a body corporate of a borough theretofore ordinarily made renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, on the payment of an arbitrary fine,—

Then, notwithstanding anything in this Act, the council of the borough may renew the lease for such term or number of years, either absolutely or determinable with any life or lives, or for such life or lives, and at such rent, and on the payment of such fine or premium, either certain or arbitrary, and with or without any covenant for the future renewal thereof, as the council could or might have done if this Act had not been passed.

Working Men's Dwellings.

Sites for working men's dwellings.

111.—(1.) If a municipal corporation determines to convert any corporate land into sites for working men's dwellings, and obtains the approval of the Treasury for so doing, the corporation may, for that purpose, make grants or leases for terms of nine hundred and ninety-nine years, or any shorter term, of any parts of the corporate land.

(2.) The corporation may make on the land any roads, drains, walls, fences, or other works requisite for converting the same into building land, at an expense not exceeding such sum as the Treasury approve.

(3.) The corporation may insert in any grant or lease of any part of the land (in this section referred to as the site) provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the building, and prohibiting the division of the site or building, and any addition to or alteration of the character of the building, without the consent of the corporation, and for the re-vesting of the site in the corporation, or its re-entry thereon, on breach of any provision in the grant or lease.

(4.) Every such provision shall be valid in law to all intents, and binding on the parties.

(5.) All costs and expenses incurred or authorized by a corporation in carrying into execution or otherwise in pursuance of this section, shall be paid out of the borough fund and borough rate, or by money borrowed by the corporation under this Part.

(6.) In this section the term working men's dwellings means buildings suitable for the habitation of persons employed in manual labour and their families; but the use of part of a building for purposes of retail trade or other purposes, approved by the council, shall not prevent the building from being deemed a dwelling.

Repayment of Loans.

Power for Treasury to impose conditions as to repayment of money borrowed.

112.—(1.) Where the Treasury approve a mortgage or charge under this Part they may (*a*), as a condition of their approval, require that the money borrowed on the security of the mortgage or charge be repaid, with all interest thereon, in thirty years, or any less period, and either by instalments or by means of a sinking fund or both.

(2.) In that case the sums required for providing for the repayment of the principal and interest of the money

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borrowed shall be by virtue of this Act a charge on all or any of the following securities, namely, the land comprised in the mortgage (without prejudice to the security thereby created), or any other corporate land, or the borough fund, or the borough or other rates legally applicable to payment of the money borrowed, or of the expenses which the money is borrowed to defray, as the Treasury direct (*b*).

(*a*) The word "may" seems to give a discretion to the Treasury.
(*b*) *See* sect. 106. "In that case" must mean in the case of a mortgage with the consent of the Treasury.

Provisions as to sinking fund.

113.—(1.) Where money borrowed under this Part is directed to be repaid by means of a sinking fund, the council shall, out of the rents and profits of the land on which, or out of the borough funds or rates on which, the sums required for the sinking fund are charged under this Act, invest such sums, at such times, and in such government annuities, as the Treasury direct, and shall also from time to time invest in like manner all dividends of those annuities.

(2.) The annuities shall, in the books of the Bank of England, be placed to the account of the corporation, and in the matter of this Act or of any previous Act under which the investment is made.

(3.) The dividends of the annuities shall be received and invested by such persons as the council by power of attorney under the corporate seal from time to time appoint.

(4.) No transfer shall be made of the annuities, or of any part thereof, without the consent in writing of the Treasury addressed to the chief accountant of the Bank of England.

(5.) The direction in writing of the council by power of attorney under the corporate seal, with the consent in writing of the Treasury, shall be sufficient authority to the Bank for permitting any such transfer.

Purchase or Compensation Money.

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Provision for replacing purchase or compensation money paid to treasurer.

114.—(1.) Where purchase money or compensation has been paid to the Bank of England under an Act of Parliament in respect of land or any interest therein purchased or taken from a municipal corporation, or in respect of permanent damage to land of a municipal corporation, and the Treasury approve of the payment of the money or compensation, or of any money to arise from the sale of any Government securities in which the same has been invested, to the corporation or the treasurer, the Treasury may, as a condition of their approval, require provision to be made for raising and for investing in Government annuities a sum equivalent to the amount of money so paid.

(2.) The foregoing provisions of this Part applicable in the case of a sinking fund, as regards the mode of investing, payment of dividends, and transfer of annuities, shall be applicable in the case of investments under this section.

(3.) The Treasury shall, when it appears to them that an amount of annuities equivalent to the amount so paid has been raised by investment, direct that the accumulation shall cease; and the annuities and the dividends thereof shall thenceforth be applicable as if the annuities had arisen from investment under the Act of Parliament under which the purchase money or compensation became payable.

(4.) But this section shall not apply to money payable to a municipal corporation when provision for the application of the money, or of the price or compensation from which the money is derived, is contained in any local Act of Parliament relating thereto, and the money is to be paid to the corporation to be applied in conformity with that provision (*a*).

(*a*) A company under the powers of a local Act gave notice to the Corporation of N. that they required to take a portion of the corporate estate for the purpose of constructing a railway. The amount of the compensation money was settled by arbitration, and paid into

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the Bank of England under the powers of the Lands Clauses Consolidation Acts. The Treasury were applied to for their consent to the appropriation of the compensation money in paying off certain mortgage debts on the estate. They refused their consent on the ground that the application should be made to the High Court. The application was made to the Court, and the money ordered to be paid by the bank to the corporation, and applied in discharge of such debts.

See also *Re Derby Municipal Estates*, L. R. 3 C. P. D. 289.

Investment of proceeds of sale or exchange authorized by Treasury.

115.—(1.) Where the Treasury approve of the sale or exchange of any corporate land or of any interest therein, their approval may be subject to such conditions as they think fit in relation to the investment for the benefit of the corporation of the money arising from the sale or exchange.

(2.) If the Treasury direct the money to be invested in Government annuities, the foregoing provisions of this Part respecting the mode of investing, payment of dividends, and transfer of annuities shall be applicable, but not so as to make any accumulation necessary.

(3.) If the Treasury consent to the application of the money or of any part thereof for the benefit of the inhabitants of the borough, they may, as a condition of their consent, require the like provision to be made as they are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer.

Power for Treasury to authorize application of certain investments for benefit of borough.

116. The Treasury may at any time approve of the application of any annuities arising from investments under either of the two last preceding sections, or of the money to arise from the sale thereof, or any part thereof respectively, for the benefit of the inhabitants of the borough; and, as a condition of their approval may require the like provision to be made as they are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer, and so from time to time, and the provisions of this Part shall be applicable accordingly; but it shall not be imperative on the Treasury to impose the condition aforesaid where by reason of the application of the annuities or money to improvement of the property of the corporation or for the

permanent benefit of the borough, or otherwise, under the special circumstances of the case, the Treasury in their discretion think fit to dispense with the condition. Sect. 116.

Misappropriation.

117. If any person authorized to receive money to arise from the sale of any annuities or securities purchased or transferred under the foregoing provisions of this Part, or under any Act repealed by this Act, or any dividends thereon, or any other such money as aforesaid, appropriates the same otherwise than as directed by this Act, or by the Treasury in pursuance thereof, he shall be guilty of a misdemeanour, and shall be subject in respect thereof to the provisions of the Larceny Act, 1861, applicable to a person guilty of a misdemeanour under section seventy-five of that Act, or to the provisions of any enactment for the time being substituted for that section. Penalty for misappropriation of moneys. 24 & 25 Vict. c. 96, s. 75.

Corporate Stock.

118.—(1.) Any stocks, funds, or public securities (in this section referred to as stock) standing in the books of the Bank of England or of any other public company or society in the name of a municipal corporation, under any style or title of incorporation, and the dividends and interest thereof and all bonuses and accretions thereto, belonging to the municipal corporation, without being subject to any trust for charitable purposes, may be transferred by and paid to such persons as the council appoint by an instrument under the corporate seal, signed and sealed also by the clerk to the trustees of the municipal charities, who shall on request sign and seal it (*a*). Transfer of and other dealings with corporate stock.

(2.) Any stock and money so standing belonging to the trustees of the municipal charities solely on charitable trusts may be transferred by and paid to persons appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand

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and seal of their clerk, and being also sealed with the corporate seal, which seal the mayor shall on request cause to be affixed thereto.

(3.) The dividends and interest of any stock and money so standing, belonging partly to the municipal corporation but subject to charitable trusts, may be paid to persons authorized to have the same paid to them by an instrument in writing under the corporate seal, and appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand and seal of their clerk.

(4.) In every case the receipt of the persons authorized to give a receipt to the company or society by an instrument under the corporate seal, and signed and sealed by the clerk to the trustees of the municipal charities, shall be an effectual discharge to the company or society.

(5.) So much of the money so paid as is held on charitable trusts shall be paid over to the trustees of the municipal charities, and so much as the municipal corporation is entitled to beneficially shall go to the borough fund.

(6.) But the company or society shall not be bound to see to the application of that money, or to the validity of the appointment of the clerk to the trustees of the municipal charities, or to the execution of any instrument by any of them, or to inquire whether or not the stock or money is charged with or held on any charitable trust.

(7.) Every person authorized to so receive any money shall account to the council and to the trustees of the municipal charities for all money received by him, and on his failure so to account a court of summary jurisdiction may, on complaint either of the council or of the trustees, by summary order require him to do so.

(*a*) Testator recently by his will bequeathed certain personal estate to the corporation of N. The estate was administered under the direction of the court, and a portion of the fund paid into the Bank of England in the names of the Mayor, &c., of N. The Bank of England refused to allow the corporation to transfer the stock without the signature of the clerk to the trustees of municipal charities. The clerk to the trustees knew nothing of the business, and a

considerable delay was the consequence. There appears to be no sufficient reason for requiring the consent of the clerk. Note Sect. 118.

Borough Bridges.

119.—(1.) Every bridge which is either wholly or in part in a borough and which the borough and not the county wherein the borough is situate is legally bound to maintain or repair (*a*) shall, as to the whole of the bridge if it is wholly in the borough, or as to such part only as is in the borough, be maintained, altered, widened, repaired, improved, or rebuilt under the sole management and control of the council. Maintenance of borough bridges.

(2.) For that purpose the council shall have all the powers which the justices of a county have with respect to a county bridge (*b*), but the notices required in the case of a county bridge shall not be required in the case of a borough bridge.

(3.) All expenses incurred for the purposes of this section shall be paid out of the borough fund or borough rate, or out of money borrowed on the security thereof.

(4.) The council, with the consent of the Treasury, may from time to time borrow on that security such sums as they deem requisite for any of those purposes, and may mortgage the borough fund and borough rate for the purpose of securing the repayment, with interest, of any money so borrowed (*c*).

(*a*) *See* Archbold's Pleading and Evidence in Criminal Cases, 19th Ed., p. 984.
(*b*) *See* Archbold's Quarter Sessions, 3rd Ed., p. 87.
(*c*) *See* sect. 112.

Loans for Municipal Buildings.

120. The council of a borough may borrow money from the Public Works Loan Commissioners for the purpose of building, enlarging, repairing, improving, and fitting up any building which they are by this Act authorized to build, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and Power to borrow for buildings.

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interest of the loan, and may mortgage the rate or borough rate to the Commissioners in accordance with the Public Works Loans Act, 1875, (*a*) or any amendment thereof, in such manner and form as the Commissioners direct.

38 & 39 Vict. c. 89, s. 40.

(*a*) *See* this statute in the Appendix.

Advowsons and similar Rights.

Obligations and powers in respect of advowsons, &c.

121.—(1.) Notwithstanding any sale by a municipal corporation of any advowson, or of any right of nomination or presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, whether the sale is made before or after the commencement of this Act, the corporation and its property shall continue liable to the same obligation (if any) of providing for and maintaining or contributing to the maintenance of any priest, curate, preacher, or minister, as if the sale had not been made; and that liability may be enforced by the same means, at the instance of the Crown or otherwise, as if this Act had not been passed, and the advowson or right had remained vested in the corporation.

(2.) Where a municipal corporation holds land subject to an obligation to provide a priest, curate, preacher, or minister, nothing in this Act shall preclude the corporation from augmenting or endowing his office, either by assigning to him and his successors in office a competent portion of the land, or by charging thereon an annual stipend, either in money or in kind, for his and their use and benefit, except that no such augmentation or endowment shall be valid without the approval of the Treasury.

(3.) Where a municipal corporation sells a right of nomination to an ecclesiastical preferment, not being a benefice or perpetual curacy, that preferment shall, from and after the sale, be a benefice presentative, and the holder thereof and his successors shall be a body corporate, having perpetual succession and capable of taking and holding in perpetuity all property granted to or purchased for them by the Governors of the Bounty of Queen Anne, or by other persons contributing with those governors as benefactors.

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Regulations as to sale of ecclesiastical patronage belonging to municipal corporation.

122.—(1.) Where at the passing of the Municipal Corporations Act, 1835, a body corporate, or any particular class, number, or description of members thereof, or the governing body thereof, were in their corporate capacity, and not as trustees of a charity, seised or possessed of any manor or land whereto any advowson, or right of nomination or presentation to any benefice or ecclesiastical preferment was appendant or appurtenant, or of any advowson in gross, or of any right of nomination or presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, the advowson or right, if not sold before the commencement of this Act, shall be sold at such time and in such manner as the Ecclesiastical Commissioners for England direct, so that the best price be obtained for the same.

(2.) Upon any such sale the council shall, with the consent in writing of those Commissioners, signed by any three or more of them, convey, under the corporate seal, the advowson or right to the purchaser, or as he directs, and the advowson or right shall vest accordingly.

(3.) The proceeds of sale shall be paid to the treasurer and invested in Government securities, and the income thereof shall go to the borough fund; or those proceeds, or any part thereof, may be applied towards the liquidation of any debt contracted by the body corporate, before the passing of the Municipal Corporations Act, 1835.

(4.) Any vacancy arising before the sale shall be supplied by the presentation or nomination of the bishop or ordinary of the diocese in which the benefice or preferment is situate.

Special Rates.

Power to continue rates for special purposes.

123. Where before the passing of the Municipal Corporations Act, 1835, a rate might be levied in a borough for the purpose of watching conjointly with any other purpose, nothing in this Act shall prevent the levying and collecting of such a rate for that other purpose solely,

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or affect the powers given in any Act anterior to the Municipal Corporations Act, 1835, as far as they relate to that other purpose; but where the amount of that rate might not before the passing of the Municipal Corporations Act, 1835, exceed a given rate in the pound on the value of property rateable thereto, the rate to be levied for the other purpose solely shall not exceed such proportion of that given rate as appears to have been expended for that other purpose by an account of the average yearly expenditure during the last seven years before the passing of the Municipal Corporations Act, 1835, or during those of the same seven years during which the rate was levied.

Misapplication of Corporate Property.

Prohibition of expenditure of corporate funds on parliamentary elections.

124.—(1.) It shall not be lawful for a municipal corporation, or the council of a borough, or a corporate officer, or a trustee, or other person acting for a municipa corporation, to pay or apply any money, stocks, funds, securities, or personal property, of or held in trust for the corporation, in payment of any expenses occasioned by a parliamentary election or incurred by any person offering himself as a candidate at or before a parliamentary election.

(2.) Any bond, covenant, recognizance, or judgment given by a corporation, council, officer, trustee, or person as aforesaid, for securing payment of such expenses, shall be void.

(3.) Any payment, application, bond, covenant, recognizance, or judgment made or given by a corporation, council, officer, trustee, or person as aforesaid, for inducing any person to labour in a parliamentary election at a future time, or to pay or incur expenses as aforesaid at a future time, shall be deemed to be forbidden and declared void by this section, although colourably made or given for any other cause or consideration.

(4.) Any mortgage or other disposition of corporate land for securing or satisfying any expenses or engage-

ments incurred or to be incurred as aforesaid, and any estate or charge thereby created, shall be void. Sect. 124.

(5.) Any resolution, byelaw, or other proceeding of a council, purporting to direct or authorize any payment or thing forbidden by this section, or made or adopted for evading the provisions thereof, shall be void.

(6.) If any member of a municipal corporation authorizes or directs any payment or application forbidden by this section, or assents to, or concurs or participates in, any affirmative vote or proceeding relating thereto, or signs or seals in his individual capacity, or affixes the corporate seal to, any instrument by this section declared void, he shall be guilty of a misdemeanour, and, on conviction thereof in the High Court, shall, in addition to such punishment as the court awards, be for ever disabled to take, hold, or exercise any office in the same corporation.

(7.) If any corporate officer, trustee, or other person as aforesaid, makes, or concurs in making, any payment or application of money or property as aforesaid, he shall be deemed to have done so in his own wrong, and he shall be individually liable to repay and make good the amount or value thereof to the corporation, notwithstanding any release or pretended indemnity given to him in the name or on behalf of the corporation.

(8.) Any two or more burgesses may bring and prosecute any action in the name of the corporation against any officer, trustee, or person making any illegal payment or application as aforesaid, as if they, their executors and administrators, were jointly and severally appointed the irrevocable attorneys of the corporation for that purpose; but the plaintiffs shall, on the application of the defendant, give reasonable security, as the court directs, for costs, as between solicitor and client.

(9.) Nothing in this section shall affect the provisions of the Ballot Act, 1872, or of any other Act for the time being in force regulating the payment by the returning officer or otherwise of expenses relating to parliamentary elections.

Transitory Provisions.

Sect. 125.

Transfer of investments made before 1860 in names of trustees.

125.—(1.) In the several cases following:

(*a.*) Where before the fifteenth of May one thousand eight hundred and sixty (*a*) the Treasury on approving of a mortgage of corporate land had required a sinking fund in names of trustees;

(*b.*) Where before the same day the Treasury, on approving of the payment to a corporation or their treasurer of purchase money for or compensation in respect of corporate land, or of money arising from sale of Government securities in which the same had been invested, had required provision for raising by investments in names of trustees an amount equivalent to the amount so paid;

(*c.*) Where before the same day the Treasury, on approving of a sale or alienation of corporate land, had required the investment of the proceeds in names of trustees;

The Treasury, if they have not so done before the commencement of this Act, may require any securities in which any such investments had been made to be transferred into the name of the corporation in the matter of this Act, or may require any money applicable for the purposes of such sinking fund to be invested in the purchase of Government annuities in the name of the corporation and in the matter of this Act.

(2.) The order in writing of the Treasury for that purpose shall be a sufficient discharge to the trustees from all claims in respect of the transfer of the securities in pursuance of the order.

(3.) The Treasury may, in the cases aforesaid, give such directions as they might give in the analogous cases in this Part provided for, arising after the commencement of this Act, or as near thereto as circumstances require, and the provisions of this Part shall apply accordingly.

(4.) Where any such transfer as aforesaid has before the commencement of this Act been made into the name of the corporation in the matter of any Act repealed by

this Act, this Act shall, if the Treasury so direct, be substituted in the title of the account for that Act. Sect. 125.

(*a*) This is date of the passing of "The Municipal Corporations Mortgages, &c., Act, 1860."

Scheme respecting mortgage debts incurred before 1860.

126. Where in a borough any mortgage debt had been before the fifteenth of May one thousand eight hundred and sixty incurred, for discharge of which no adequate provision then existed, the council, if they have not so done before the commencement of this Act, may submit to the Treasury any scheme for the discharge thereof by instalments, or a sinking fund, or both, extending over any term of years, and if the Treasury approve of the scheme, the sums required for discharge of the debt as proposed therein shall by virtue of this Act become charged on all or any part of the corporate land, or the borough fund, or borough rate, or any other rate applicable to discharge of the debt, or on all or any of those securities, as the Treasury direct, and the provisions of this Part applicable for repayment of money borrowed on mortgage by a sinking fund, or instalments, or both, except the limitation to a period of thirty years, shall apply for discharge of the debt.

Consolidation of debts incurred before 1860.

127. Where in a borough debts had from time to time, before the fifteenth of May one thousand eight hundred and sixty, been incurred under Acts of Parliament, with different periods assigned for discharge thereof, the council, if they have not so done before the commencement of this Act, may, with the consent of the Treasury, and with the previous consent in writing of the persons or bodies corporate to whom the debts are owing (*a*), consolidate the debts into one, and provide for discharge of the consolidated debt by annual instalments, or a sinking fund, or both, extending over a period not exceeding thirty years, and make the instalments or payments a charge on the borough fund, or borough rate, or any other rate applicable to the discharge of the debts, or on all or any of those securities, as the Treasury direct.

Note. Sect. 127.

(*a*) It does not appear necessary to have the consent of the creditor unless the method of repayment is altered. The creation of a sinking fund need not interfere with his position.

Saving for sales, &c. in pursuance of past contracts and resolutions.

128. Nothing in this Act shall affect any power to sell, mortgage, alienate, or lease corporate lands in pursuance of an agreement made on or before the fifth day of June (*a*) one thousand eight hundred and thirty-five, or of a resolution entered in the books of a body corporate on or before that date.

(*a*) This is the date mentioned in the 94th section of the 5 & 6 Will. 4, c. 76.

Saving for rates in respect of past debts.

129. Nothing in this Act shall prevent the levying or collection of any rate for the purpose of paying any debt contracted before the commencement of this Act or any interest thereon.

Saving for rights of creditors in respect of tolls or dues.

130. It shall not be lawful for the council of a borough of which the body corporate had before the passing of the Municipal Corporations Act, 1835, contracted any lawful debt chargeable on any tolls or dues belonging or payable to that body corporate, or to any member or officer thereof in his corporate capacity, or towards the satisfaction whereof such tolls or dues or any part thereof were or was applicable before the passing of that Act, to alter or reduce the amount to be levied and payable of such tolls or dues, or to grant for any consideration any remission thereof or exemption therefrom or of or from any part thereof, except with the consent in writing, under the hands of a majority in number and amount, of the creditors to whom the debt is due until after the debt and all arrears of interest due thereon have been fully paid and satisfied.

Saving for lawful debts contracted before 5 & 6 Will. 4, c. 76.

131.—(1.) Notwithstanding anything in this Act, the application of the borough fund to the several payments specified in the Fifth Schedule or otherwise authorized by this Act shall be subject to the payment of any lawful

debt due from the municipal corporation to any person which was contracted before the passing of the Municipal Corporations Act, 1835, and is unredeemed, or of so much thereof as the council from time to time are required or deem it expedient to redeem, and to the payment from time to time of the interest on so much thereof as remains unredeemed. Sect. 131.

(2.) The council may from time to time execute under the corporate seal any deed or obligation in the name of the corporation for securing repayment and satisfaction of any such debt or obligation contracted by or on behalf of the corporation before the passing of the Municipal Corporations Act, 1835.

(3.) Money borrowed by a council for the purpose of being applied, and applied, in or towards satisfaction and discharge of any such pre-existing debt or obligation, shall be deemed to be a debt contracted by or on behalf of the corporation before the passing of the Municipal Corporations Act, 1835.

132. Nothing in this Act shall make liable to the payment of any debt contracted by any body corporate of a borough before the passing of the Municipal Corporations Act, 1835, any part of the real or personal estate of that body corporate which before the passing of that Act was not liable thereto or authorize the levy of any rate within any part of any borough for the purpose of paying any debt contracted before the passing of that Act, which before the passing of that Act could not lawfully be levied therein towards payment of the same. Saving against new liability to debts contracted before 5 & 6 Will. 4, c. 76.

PART VI.

Charitable and other Trusts and Powers.

Charitable Trusts.

133.—(1.) Where at the passing of the Municipal Corporations Act, 1835, the body corporate of a borough, or any one or more of the members thereof, in his or their Administration of charitable trusts and vesting of legal estate.

Sect. 133. corporate capacity, stood solely, or together with any person or persons elected solely by that body corporate, or solely by any particular number, class, or description of members thereof, seised or possessed, for any estate or interest, of land in whole or in part in trust or for the benefit of any charitable uses or trusts, and the legal estate in that land was, at the passing of the Municipal Corporations Act, 1835, vested in the body corporate or person or persons so seised or possessed thereof, and was by the Charitable Trusts Act, 1853, vested in the trustees appointed by the Lord Chancellor under the Municipal Corporations Act, 1835, or such of them as should be surviving and continuing trustees under that appointment, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances, and on such and the same trusts, as the same were subject to before such vesting, then, in every case, on the death, resignation, or removal of any trustee, and on any appointment of a new trustee, the legal estate in that land and in all other lands subject to any such charitable uses or trusts for the time being vested in the trustees or any of them, or in any persons or the heirs or devisees of any person deceased, resigned, or removed, shall vest in the persons who after such death, resignation, or removal, and such appointment of a new trustee, continue or are the trustees for the time being, without any conveyance or assurance.

16 & 17 Vict. c. 137, s. 65.

(2.) Nothing in this section shall take away, abridge, or prejudicially affect any power, authority, or jurisdiction of the Charity Commissioners for England and Wales.

Special Trusts and Powers.

Corporation to be trustee where corporators trustees.

134. The municipal corporation of a borough shall be trustees for executing by the council the powers and provisions of all Acts of Parliament made before the passing of the Municipal Corporations Act, 1835 (other than Acts made for securing charitable uses and trusts),

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and of all trusts (other than charitable uses and trusts) of which the body corporate of the borough, or any of the members thereof in their corporate capacity, was or were sole trustees before the first election of councillors in the borough under the Municipal Corporations Act, 1835.

Appointment of members of council to be trustees in cases of joint trusts and other cases.

135.—(1.) In every borough in which the body corporate, or a particular or limited number, class, or description of members thereof, or of persons appointed by the body corporate, was or were before the passing of the Municipal Corporations Act, 1835, trustees jointly with other trustees for the execution of any Act of Parliament, or of any trust, or in which the body corporate, or any particular or limited number, class, or description of members or nominees thereof, by any statute, charter, bylaw, or custom, before the passing of the Municipal Corporations Acts, 1835, was or were, lawfully appointed to or exercised any powers, duties, or functions, not otherwise in the Municipal Corporations Act, 1835, or this Act, provided for, and the continuance of which is not inconsistent with the provisions of the Municipal Corporations Act, 1835, or this Act, the council, on the day prescribed in any Act of Parliament as aforesaid, or in the deed or will by which the trust is created, for a new election, nomination or appointment of trustees, or on which a new election, nomination, or appointment has usually been made (and if there is no day prescribed or usually observed, then on or within ten days after (*a*) the first of January in every year), shall appoint the like number of members of the council, or as near as may be to the like number of members of the council, as there were theretofore members or nominees of the body corporate of the borough who in right of their office were such trustees, or charged with the execution of such powers, duties, and functions, in room of the members or nominees of the body corporate ceasing to be trustees, or ceasing to exercise such powers, duties, and functions by virtue of the Municipal Corporations Act, 1835.

(2.) In every case of extraordinary vacancy among the

Sect. 135. trustees or persons so appointed, the council shall forthwith appoint one other member of the council in the room of the person by whom the vacancy has been made, to hold his trust or office for such time as that person would regularly have held it.

(*a*) "or within ten days after." These words are newly added.

Local Acts.

Transfer of powers of local authorities to municipal corporations.

136.—(1.) The trustees appointed or acting by or under any local Act of Parliament for the time being in force, for paving, lighting, supplying with water or gas, cleansing, watching, regulating, or improving, a borough, or any part thereof, or for providing or maintaining a cemetery or market in or for a borough, or any part thereof, whether in any such case their powers under the local Act do or do not extend beyond the borough, may, if they think fit, at a meeting called for this purpose, transfer to the municipal corporation of the borough, with the consent of the council but not otherwise, all the rights, powers, estates, property, and liabilities for the time being vested in or imposed on the trustees under the local Act (*a*).

(2.) The transfer shall be made in writing under the common seal of the trustees if they are a corporation, and if not, then by deed executed by the trustees, or by any two of them acting by their authority and on their behalf.

(3.) On the transfer being made, the municipal corporation shall become and be the trustees for executing by the council the powers and provisions of the local Act; and all the rights, powers, estates, and property vested in the transferring trustees shall vest in the corporation; and all the liabilities and obligations of the transferring trustees shall be transferred to and borne by the corporation, and the transferring trustees shall be discharged therefrom.

(*a*) This section modifies the repealed law, so as to avoid the difficulty which arose at Margate. (See *Swinford* v. *Keeble*, L. R. 1 Q. B. 549.)

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137.—(1.) Where at the passing of the Municipal Corporations Act, 1835, there was a local Act of Parliament for lighting part of a borough then incorporated, the council may, if they think fit, make an order that any specified part of the borough not within the provisions of any such local Act shall, after a day fixed in the order, be within those provisions; and after that day the part so specified shall be within those provisions, as far as relates to lighting, or to any rate authorized to be levied for lighting. Power for council to extend local lighting Act.

(2.) But the part so specified shall be lighted in like manner as those parts of the borough which before the making of the order were within those provisions; and any rate raised for the purpose of defraying the expenses of lighting the part so specified shall not exceed the average expense in the pound of lighting the other parts of the borough (*a*).

(*a*) As to the powers for lighting of the council as an urban sanitary authority, *see* 38 & 39 Vict. c. 55, s. 161.

138. Everything provided under any local Act of Parliament in force on the twentieth of August, one thousand eight hundred and thirty-six, to be done exclusively by a particular or limited number, class, or description of the members of any body corporate named in the Schedules to the Municipal Corporations Act, 1835, the continuance of which was not inconsistent with the provisions of that Act, and everything provided in any such local Act to be done by the justices, or by some particular class or description, or members of such body corporate, being justices, at a court of quarter sessions, which did not relate to the business of a court of criminal or civil judicature, if the same respectively has been lawfully continued to be done up to the commencement of this Act by the council, or a committee thereof, shall be continued thereafter to be done by the council at a quarterly meeting, or by any three of a committee of the council appointed at such meeting. Exercise of powers under local Acts.

PART VII.

Borough Fund: Borough Rate: County Rate.

Borough Fund.

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Payments to borough fund.

139. The rents and profits of all corporate land, and the interest, dividends, and annual proceeds of all money, dues, chattels, and valuable securities belonging or payable to a municipal corporation, or to any member or officer thereof in his corporate capacity, and every fine or penalty for any offence against this Act (except where and as far as the application thereof is otherwise provided for) shall go to the borough fund.

Application of borough fund.

140.—(1.) The borough fund shall be applicable to and charged with the several payments specified in the Fifth Schedule.

(2.) The payments specified in Part I. of that schedule may be made without order of the council; those specified in Part II. may not be made without such order.

(3.) No other payment shall be made out of the borough fund, except—

(*a.*) Under the authority of an Act of Parliament; or

(*b.*) By order of the council; or

(*c.*) By order of the court of quarter sessions for the borough; or

(*d.*) By order of a justice in pursuance of this Act; or

(*e.*) In cases in which the court of quarter sessions for a county, or a justice acting in and for a county in the discharge of his judicial duty, might make an order for the payment of money on the treasurer of the county.

(4.) Saving, nevertheless, in relation to the application of the borough fund as authorised by this section, or otherwise by this Act, all rights, interests, and demands of all persons in or on the real or personal estate of the municipal corporation, by virtue of any legal proceeding, or of any mortgage, or otherwise (*a*).

Note. Sect. 140.

(*a*) Mr. Ilbert, in his notes on the first draft of the Bill, states that this clause groups the scattered provisions of the Act of 1835, with respect to the payments to which the borough fund is applicable. It makes a distinction between payments which may, and payments which may not, be made without a special order.

The Fifth Schedule accurately consolidates the existing law, and many of the cases bearing on the legality of expenditure by a town council are referred to in the notes on that Schedule.

A question may arise as to the interpretation to be put upon sub-sect. 3. The former part of the section specifies the payments that may be made out of the borough fund without the order of the council, and those that may not be made without such order. Sub-sect. 3 specifies certain other payments that may be made out of the borough fund, and among such payments classifies those payments which the previous part of the same section declares shall not be made without the order of the council. Can such payments be made by the treasurer without the order of the council? It would seem that where an Act of Parliament orders the treasurer to make payments out of the borough fund he would be justified in making such payments without an order of the council; but where the Act of Parliament directs the payment to be made out of the borough fund without directing the treasurer to make such payments, then the order of the council appears to be necessary.

Again, where an order is made by a court of competent jurisdiction upon the treasurer, directing him to make certain payments, then such payments may be made by him without the order of the council; but if the order is only for payment out of the borough fund, then it seems such payment cannot be made without the order of the council. The expenses mentioned in Part II. of the Fifth Schedule cannot be made by the treasurer without an order by the council, except in those cases which fall within the provisions of the 3rd sub-section. (*See* sections 143, 149, and 169.)

Sub-sect. 4 has been framed with reference to the decision in *Arnold* v. *Mayor of Gravesend*, 2 K. & J. 574.

Orders for payment of money.

141.—(1.) An order of the council for payment of money out of the borough fund shall be signed by three members of the council, and countersigned by the town clerk.

(2.) Any such order may be removed into the Queen's Bench Division of the High Court by writ of *certiorari*, and may be wholly or partly disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the court (*a*).

(*a*) The repealed enactment recited that it was expedient to give to all persons interested in the borough fund a more direct and easy remedy for any misapplication of such fund. In a recent case it was decided that misapplication means expenditure *ultra vires*. The word is used in its natural and grammatical, and not in any technical, sense, and does not mean the mere non-compliance with the technical requirement of a statute; nor does it include the payment for necessary, useful, and desirable work done within the powers of the

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corporation at reasonable prices. (See *Reg.* v. *Mayor, &c., of Norwich*, decided Q. B. D. by GROVES and LOPES, JJ., 5th May, 1882.) This sub-section seems to confer an absolute discretion on the judges to allow any payment made by a town council. It is hoped that in the interest of local self-government judges will see their way to support an expenditure which has been incurred *bonâ fide*, in the good government of the borough, for useful and desirable work, even when not literally within the prescribed powers of the corporation. A corrupt, extravagant, needless, or foolish expenditure should not be upheld; but local authorities should be supported and encouraged in the very difficult duties they have to perform, when they are acting for the best interests of the borough, and without fraud or corrupt motive.

The 13 Geo. 2, c. 18, s. 5, limiting the time within which an application for a *certiorari* may be made, does not apply. (*R.* v. *Mayor, &c., of Sheffield*, L. R. 6 Q. B. 652.)

Payments to and by treasurer.

142.—(1.) All payments to and out of the borough fund shall be made to and by the treasurer.

(2.) All payments to the treasurer shall go to the borough fund.

Application of surplus of borough fund.

143.—(1.) If the borough fund is more than sufficient for the purposes to which it is applicable under this Act, or otherwise by law, the surplus thereof shall be applied under the direction of the council for the public benefit of the inhabitants and improvement of the borough (*a*).

(2.) If the surplus arises from the rents and profits of the property of the municipal corporation, and not from a borough rate, and the borough is a sanitary district under the Public Health Act, 1875, then the municipal corporation, as the sanitary authority for the borough, may apply the surplus in payment of any expenses incurred by them as such sanitary authority, before or after the commencement of this Act, in improving the borough, or any part thereof, by drainage, enlargement of streets, or otherwise, under the Public Health Act, 1875, or any Act thereby repealed.

(*a*) *See* the cases collected on notes to the Fifth Schedule, Part II.

Borough Rate.

Power for council to make borough

144.—(1.) If the borough fund is insufficient for the purposes to which it is applicable under this Act or other-

wise by law, the council shall from time to time estimate (*a*), as correctly as may be, what amount, in addition to the borough fund, will be sufficient for those purposes. Sect. 144. rate and assess contribution thereto.

(2.) In order to raise that amount, the council shall, subject to the provisions of this Act, from time to time order a rate, called a borough rate, to be made in the borough.

(3.) A borough rate may be made retrospectively, in order to raise money for the payment of charges and expenses incurred, or which have come in course of payment, at any time within six months before the making of the rate (*b*).

(4.) The council shall assess the contributions to the borough rate on the several parishes and parts of parishes in the borough in proportion to the total annual value of the hereditaments in each parish or part which are rateable to the poor, or in respect of which a contribution is made to the poor rate.

(5.) That value shall be estimated according to the valuation list (if any) in force for the time being, and if there is none, according to the last poor rate (*c*).

(6.) But if for any reason the council think that the valuation list or poor rate is not a fair criterion of value they may cause an independent valuation to be made.

(7.) For the purpose of assessing a borough rate, or for the purpose of an independent valuation, the council from time to time may cause any of the books of assessment of any rates or taxes, parliamentary or parochial, on any property, and the valuation by which the assessment is made, in the hands of the overseers, to be brought before them, and may take copies thereof or extracts therefrom, or may direct any person to take copies of or extracts from such books being in his hands, without having the same brought before the council, or may call before them any overseer to give evidence respecting the same; and may cause copies of the total amount assessed in each parish in respect of any tax payable to the Crown, and the total amount of the valuation of the property on which that assessment was made in any past year, to be

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made out by the clerk to the commissioners of each district (*d*).

(8.) The overseers and such persons as they select, by warrant of the council, signed by the mayor and sealed with the corporate seal, may enter on, view, and examine any land chargeable to the borough rate, in order to ascertain the annual value at which it ought to be charged; but no such entry shall in any case be made unless fourteen days previous notice in writing, signed by the mayor and sealed with the corporate seal, of the intention to make the entry, has been given to the overseers and to the persons on whose land the entry is to be made.

(9.) If on any occasion the overseers of a parish think that their parish is aggrieved by a borough rate, on account of the proportions assessed as the contributions of the respective parishes being unequal, or on account of some parish being without sufficient cause omitted, or on account of any other just cause of complaint, they may appeal to the recorder at the next quarter sessions for the borough, or if there is none, to the next quarter sessions for the county wherein the borough is situate, or whereto it is adjacent, against such part of the rate only as affects their parish.

(10.) The recorder or quarter sessions shall hear and finally determine the appeal, and either confirm such parts of the rate as are appealed against, or correct any inequalities, disproportions, or omissions proved to exist therein, as to him or them appears just.

(11.) The expenses of the appeal shall be paid by such parishes or persons and in such proportions as the recorder or court having cognizance of the appeal directs.

(12.) If any person having custody of any book for which the council call under this section, fails to produce it to the council, or to permit any copy thereof or extract therefrom to be made or taken, or to give such evidence as the council require, he shall, on summary conviction, be liable to a fine not exceeding ten pounds.

(13.) If any clerk to the commissioners of a district fails to make any copy, which he is required to make

under this section, within a reasonable time after his receipt of the order to make it, he shall, on summary conviction, be liable to a fine not exceeding twenty pounds (*e*). Sect. 144.

(*a*) The estimate should be made for a given period of time. It constantly happens that at the time of making the estimate the council provide a larger sum than is necessary for some objects, and less than is required for others, whilst unexpected necessities arise not provided for. Such expenditure if within the lines of the Fifth Schedule, would be legal.

The estimate should contain particulars of the proposed expenditure under general heads, and in sufficient detail to give reasonable information of the purposes for which a borough rate is to be made.

As to the surplus when the estimate has exceeded the expenditure, *see* sect. 149. (*See* the judgment of LUSH, J., in *Reg.* v. *Mayor of Sheffield*, L. R. 6 Q. B. 666.)

(*b*) This is a new and important provision. There is a clause somewhat similar in the Public Health Act, 1875, sect. 210; but that is confined to charges and expenses incurred within the six months. This sub-section takes in charges which have come in course of payment within the six months. One general rate may be made both for past and future expenditure, if the amount of each is shown in the estimate. (See *Reg.* v. *Local Board of Worksop*, 34 L. J. M. C. 220.)

(*c*) This valuation is made under the Union Assessment Act (25 & 26 Vict. c. 103).

As to the custody of such list, *ib.* sect. 23.

(*d*) These orders must be made by a resolution of the council, and should be under the common seal. The order should require the documents, etc., to be brought before the council; but the council may appoint a committee under sect. 23, and the committee would be the council for this purpose subject to the proviso in that section.

(*e*) The 92nd section of the repealed Act of 1835 gave an appeal against the rate to any person aggrieved. This provision has been omitted since it was decided in *Reg.* v. *Recorder of Bath*, 9 A. & E. 871, that the appeal was limited to cases of the total omission of parishes or unequal apportionment among the parishes. The overseers only are now clothed with authority to appeal in such cases.

Collection of borough rate in undivided parish.

145.—(1.) Where a parish is wholly in a borough, the council may from time to time, if they think fit, order the overseers to pay the contribution of the parish to the borough rate out of the poor rate made or to be made for the parish.

(2.) The overseers shall pay the contribution to the council or as they order.

(3.) If the overseers fail to pay as ordered, the amount may be levied off the goods of them or any of them, by

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distress, by virtue of a warrant signed by the mayor and sealed with the corporate seal, or signed by two justices in and for the borough (*a*).

(*a*) As this is the remedy given by the statute, it seems the court will not issue a *mandamus* commanding the overseers to levy a rate. (*See* Arnold, 2nd Edition, p. 192, and *R.* v. *Hunslet* (*Overseers*), 1 E. & E. 775.)

Collection of borough rate in divided parish.

146.—(1.) Where a parish is partly in and partly out of a borough, the overseers, on receipt of an order for payment of money for the contribution of the part in the borough towards a borough rate, which order the council may make as if the whole parish was in the borough, shall assess on and levy from the occupiers of hereditaments rateable to the poor rate in that part of the parish the amount necessary for the contribution, either as a separate rate, for which the overseers shall have all the powers which belong to them for levying a poor rate, or with and as part of the poor rate to which occupiers in that part of the parish are liable in common with occupiers in the other part.

(2.) Any person rated under this section may appeal against the rate in like manner and with the like consequences, and subject to the like provisions and regulations, as in appeals against a poor rate (*a*).

(3.) The overseers shall pay the amount of the contribution to the council, or as they order, and in default thereof shall be subject to all provisions and penalties provided by law concerning non-payment of contribution to a borough rate.

(4.) Every overseer and collector shall account for the money collected and expended under this section to the auditor of the district comprising the parish in like manner, and with the like incidents, consequences, liabilities, and power of appeal as in the case of the poor rate; and the Local Government Board shall have the like power to make orders to regulate the mode of accounting as they have in regard to other local rates.

(5.) If any balance is found in the hands of any such

overseer or collector he shall apply it towards the next rate required under this section, or pay it to his successor in office.

(6.) In default of his so applying it while in office, or making payment to his successor within seven days after the balance is found, the auditor shall proceed to recover it.

(7.) The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect the rate under this section, and shall receive thereout such remuneration for the additional duty as the overseers, with the consent of the vestry, determine.

(8.) The collector or other person appointed shall, for the purposes of this section, have all the powers of overseers.

(9.) The overseers, in estimating the amount of their assessment under this section, may include a sum for costs of assessment and collection, and a reasonable sum for rates excused or irrecoverable.

(*a*) As to appeal against poor rate, *see* Archbold's Poor Law, 13th Edition, Part V.

Rating of owners instead of occupiers for borough rate in certain cases. 32 & 33 Vict. c. 41.

147. Where the vestry of a parish has made or makes, before or after the commencement of this Act, under section four of the Poor Rate Assessment and Collection Act, 1869 (*a*), an order, as in that section provided, to the effect that the owners, instead of the occupiers, of such rateable hereditaments, as therein mentioned, shall be rated to the poor rate in respect thereof, every such order, while in force after the commencement of this Act, shall be deemed to apply to and include rating to the borough rate, with the same incidents, conditions, powers, liabilities, and remedies as if the borough rate were a poor rate.

(*a*) *See* this section in Appendix.

Warrants for levy of borough rate.

148. Any warrant required for the levy or collection of a borough rate may be issued by the mayor, signed by him, and sealed with the corporate seal.

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Borough rate to go to borough fund; and its application.

149. All sums levied in pursuance of the borough rate shall go to the borough fund; and, subject to the foregoing provisions of this Part, the same shall be applied to all purposes to which the borough fund is applicable under this Act, or otherwise by law (*a*); and, as regards a borough named in the schedules to the Municipal Corporations Act, 1835, to all purposes to which, before the passing of that Act, a borough rate was by law applicable in the borough, or a county rate was applicable in a county.

(*a*) By sect. 143, the surplus of the borough fund shall be applied under the direction of the council for the public benefit of the inhabitants and improvements of the borough. The decisions on the corresponding sections of the repealed statute show that these words give a large discretion to the council. (*See* notes to Schedule 5.) The question arises whether a surplus of the borough rate remaining after providing for the expenditure in the estimate for such rate is a surplus of the borough fund within the meaning of sect. 143?

The 139th section enacts, that the rents of land, and the proceeds of all moneys, and every fine for any offence, shall go to the borough fund. Out of this fund certain expenses are to be paid, and if the fund falls short, then the council are to make an estimate to supply such deficiency in the borough fund, and to raise that amount by a borough rate. It is declared by this section (149), that all sums so levied shall go to the borough fund, and, subject to the foregoing provisions of this Part, the same shall be applied to all purposes to which the borough fund is applicable. The purposes to which the borough fund can be applied are those mentioned in the Fifth Schedule, and the surplus contemplated in sect. 143 is that which arises from the sources of income named in sect. 139. It seems, therefore, that the surplus of a borough rate cannot be safely treated as if it were a surplus of the borough fund. (*See* the judgment of LUSH, J., in *R.* v. *Mayor of Sheffield*, L. R. 6 Q. B. 666.)

County Rate.

General exemption of quarter sessions boroughs from county rate.

150.—(1.) Where a borough has a separate court of quarter sessions, the justices of a county wherein the borough or any part thereof is situate shall not assess any hereditaments in the borough to any county rate; and, except as is expressly by this Act provided, every part of the borough shall be wholly free from contributing to any rate or assessment of any kind of and for that county.

(2.) But nothing in this section shall prevent the levy or collection of arrears of any county rate made before the grant of a separate court of quarter sessions (*a*).

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(*a*) Boroughs within this section are not thereby exempted from rates assessed on the hundred under 7 & 8 Geo. 4, c. 3. (*Birley* v. *Inhabitants of the Hundred of Salford*, 11 M. & W. 391.) Boroughs with separate courts of quarter sessions, are exempt from contributing towards the expenses of the county under the Contagious Diseases (Animals) Act, 1878 (41 & 42 Vict. c. 74), s. 47 (2). By the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 51, the treasurer of the county, in which a quarter sessions borough is situate, is to exclude from the account of moneys expended out of the county rate to which the borough is liable, all sums expended in pursuance of this Act.

Liability of quarter sessions borough for prosecution expenses of county.

151. The municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay such sums, if any, as are expended out of the county rate of the county in which the borough is situate, and as are not otherwise paid or chargeable, in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of all offenders committed for trial from the borough to the assizes for the county (*a*).

(*a*) The maintenance of offenders is now a charge on the government under the Prisons Act, 1877 (40 & 41 Vict. c. 21.) As to conveyance of prisoners, see *Mullins* v. *Surrey*, L. R. 7 App. Cas. 1. In that case it was decided that the expenses of conveying to prison persons who are committed to prison either for punishment, or to take their trial, and are unable to pay those expenses, are "expenses incurred in respect of the maintenance of prisoners" within sects. 4 & 57 of the Prisons Act, 1877, and that those sections transfer the liability for such expenses from county rates to moneys provided by Parliament.

The expense of clothing requisite for the admission of a youthful offender to a reformatory must be defrayed out of moneys provided by Parliament. (*Prison Commissioners* v. *Liverpool*, L. R. 4 Q. B. D. 329; 5 Q. B. D. 332.) The maintenance of a criminal lunatic is payable out of the Consolidation Fund. (*Mews* v. *Reg.* 48 L. T. (N.S.) 1.)

Liability of certain quarter sessions boroughs to other county expenses.

152.—(1.) If the whole or any part of the area for the time being comprised in a borough having a separate court of quarter sessions was, before the eleventh of July one thousand eight hundred and thirty-two (*a*), chargeable with or liable to contribute to the county rate of the county in which it is situate, the municipal corporation shall, in addition to its liability to pay for the purposes mentioned in the last foregoing section, continue liable to contribute to the county rate for other purposes (in this Act referred to as general county purposes), as if this Act had not been passed.

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38 & 39 Vict. c. 63.

(2.) General county purposes shall not include the costs arising out of coroners inquests, or the expenses incurred under the Sale of Food and Drugs Act, 1875, in respect of the county, or, in the case of a borough having its own inspector of weights and measures, the expenses relating to the inspection of weights and measures for the county, or payments to or in respect of special constables.

(*a*) This is the date of the passing of "an Act to settle and describe the divisions of counties, and the limits of cities and boroughs in England and Wales, in so far as respects the election of members to serve in Parliament." (2 & 3 Will. 4, c. 64.)

Mode of accounting by borough to county.

153.—(1.) The treasurer of each county shall, not more than twice in every year, send to the council of each borough situate in the county and having a separate court of quarter sessions an account showing separately—

(*a.*) The sums, if any, expended out of the county rate in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of offenders committed for trial from the borough to the assizes for the county; and

(*b.*) If the borough is liable to contribute to the county rate for general county purposes, all sums expended out of the county rate for general county purposes, and all sums received in aid or on account of the county rate, and the proportion chargeable on the borough of the sums so expended after deduction of the sums so received;

and shall make an order on the council for the payment of the sum appearing by this account to be due from the municipal corporation of the borough.

(2.) The council shall thereupon forthwith order the sum so appearing to be due, with all reasonable charges of making and sending the account, to be paid to the treasurer of the county out of the borough fund.

(3.) If the order is not complied with, two justices for the county may, on the complaint of the treasurer of the county, made within one month after the issue of the

order, issue and send to the treasurer of the borough a warrant requiring him to pay to the treasurer of the county, besides the sum mentioned in the order, the additional sum mentioned in the warrant, the same being calculated in the proportion of one shilling to every ten on the sum mentioned in the order; and until payment thereof the treasurer of the county shall have, in respect of the warrant, all the powers for the recovery thereof which are given against a guardian or overseer for the recovery of county rates and surcharges.

(4.) If any difference arises concerning the account, it shall be decided by the arbitration of a barrister, named, on the application either of the treasurer of the county or of the treasurer of the borough, by the Secretary of State. The arbitrator may, if he thinks fit, adjourn the hearing from time to time, and may require all such information to be afforded by either party as he thinks fit. He shall by his award in writing determine the amount to be paid by the council to the treasurer of the county, and his award shall be final and conclusive. He shall also assess the costs of the arbitration and determine by whom and out of what fund they shall be paid.

PART VIII.

Administration of Justice.

County Justices.

Jurisdiction of county justices in borough.

154.—(1.) Where a borough has not a separate court of quarter sessions, the justices of the county in which the borough is situate shall exercise the jurisdiction of justices in and for the borough as fully as they can or ought in and for the county (*a*).

(2.) No part of a borough having a separate court of quarter sessions shall be within the jurisdiction, exercise-

Sect. 154. able out of quarter sessions (*b*), of the justices of a county, where the borough was exempt therefrom before the passing of the Municipal Corporations Act, 1835.

(*a*) The county justices, however, cannot refuse to recognize the jurisdiction of the mayor of the borough which has not a separate court of quarter sessions. (Per STEPHEN, J., in *Wilson* v. *Strugnell*, L. R. 7 Q. B. D. 548.)

(*b*) *See* sect. 165. Appeals under the 9 Geo. 4, c. 61, in respect of licenses must be made to the next general or quarter sessions of the peace holden for the county or place wherein the cause has arisen.

The words "exerciseable out of quarter sessions" have been added with reference to *R.* v. *Dean*, 2 Q. B. 96.

Borough Justices.

Mayor and last mayor to be borough justices.

155.—(1.) The mayor shall, by virtue of his office, be a justice for the borough, and shall, unless disqualified to be mayor, continue to be such a justice during the year next after he ceases to be mayor.

(2.) The mayor shall have precedence over all other justices acting in and for the borough, and be entitled to take the chair at all meetings of justices held in the borough at which he is present by virtue of his office of mayor; except that he shall not by virtue of this section have precedence over the justices acting in and for the county in which the borough or any part thereof is situate, unless when acting in relation to the business of the borough, or over any stipendiary magistrate engaged in administering justice.

Separate commission of peace.

156. It shall be lawful for the Queen, on the petition of the council of a borough, to grant to the borough a separate commission of the peace.

Qualification of borough justice.

157.—(1.) It shall be lawful for the Queen, from time to time, to assign to any persons Her Majesty's commission to act as justices in and for each borough having a separate commission of the peace.

(2.) A justice for a borough shall not be capable of acting as such until he has taken the oaths required to be

taken by justices, except the oath as to qualification by estate, and made before the mayor or two other members of the council a declaration as in the Eighth Schedule (*a*). Sect. 157.

(3.) He must, while acting as such, reside in or within seven miles of the borough, or occupy a house, warehouse, or other property in the borough (*b*).

(4.) He need not be a burgess or have such qualification by estate as is required for a justice of a county.

(*a*) The oaths to be taken by a justice of the peace are the oath of allegiance and the judicial oath. The oath of allegiance is as follows :—

"I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God."

The judicial oath is as follows :—

"I do swear that I will well and truly serve our Sovereign Lady Queen Victoria in the office of justice of the peace, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill-will. So help me God."

These oaths must be taken before such persons as Her Majesty may from time to time appoint; or, in open court at the general or quarter sessions of the peace for the county, borough, or place in which the person taking the oath acts as justice.

On the 4th November, 1871, Her Majesty appointed that the oaths to be taken by a mayor to qualify as a justice of the peace may be taken before any two justices of the peace for the borough of which he is mayor, or if there are no justices, then before any two councillors of such borough.

On the 25th November, 1882, Her Majesty appointed that the oath of allegiance and the judicial oath may be taken by the mayor in the manner mentioned in the Circular of the 4th November, 1871 ; and by any justice of the peace before the mayor.

Any person permitted by law to make a solemn affirmation or declaration may, instead of taking an oath, make a solemn declaration in the form of the oath, substituting the words "solemnly, sincerely, and truly declare and affirm" for the word "swear," and omitting the words "So help me God."

See the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), and the Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48), and the Home Office Circulars of the 4th November, 1871, and 25th November, 1882.

The justices must also make the declaration in the Eighth Schedule.

The 1st section of the 34 & 35 Vict. c. 18, provides that no person shall be capable of becoming, or being a justice of the peace for any county in England or Wales (not being a county of a city, or county of a town) in which he shall practise and carry on the profession or business of a solicitor, or proctor ; and where any person practises and carries on such profession or business in any city or town being a county of itself, he shall, for the purposes of that Act, be deemed to carry on the same within the county within which such city or town or any part thereof is situate.

The 2nd sect. of 1 Mary, sess. 2, c. 8, provides that no person exer-

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cising the office of sheriff of any county shall use or exercise the office of justice of the peace in any county where he shall be sheriff, during the time of his exercising the office of sheriff. This provision has not been affected by any subsequent additions to the duties of the justices of the peace. (*Ex parte C. R. Colville*, L. R. 1 Q. B. D. 133.)

(*b*) This distance is to be measured under sect. 231.

Jurisdiction of borough justices.

158.—(1.) A justice for a borough shall, with respect to offences committed and matters arising within the borough (*a*), have the same jurisdiction and authority as a justice for a county has under any local or general Act (*b*) with respect to offences committed and matters arising within the county; except that he shall not, by virtue of his being a justice for the borough, act as a justice at any court of gaol delivery or quarter sessions, or in making or levying any county or borough rate (*c*).

(2.) A justice shall not be disabled from acting in the execution of this Act by reason of his being liable to the borough rate (*d*).

(*a*) Not only is the jurisdiction and authority of justices limited to matters arising within their districts, but, generally speaking, they can only exercise their powers whilst they are themselves within that district. For extensions of this rule, *see* 11 & 12 Vict. c. 42, ss. 2-7, and 36 & 37 Vict. c. 60. Merely ministerial acts, such as receiving informations, taking recognizances, &c., may be done elsewhere. (See *Newbould* v. *Coltman*, 6 Exch. R. 189; 20 L. J. M. C. 149; 16 L. T. 488, and the cases there cited.)

(*b*) "Local Act." This must mean only as to those matters in the nature of offences arising in the borough.

(*c*) The following Acts, namely, 12 & 13 Vict. c. 64. s. 1, and 15 & 16 Vict. c. 38, refer to the jurisdiction of borough justices in relation to the relief of the poor. As to the appointment of overseers by the borough justices, *see* 12 & 13 Vict. c. 8, and 15 & 16 Vict. c. 38.

(*d*) There is a similar provision in sect. 2 of the 30 & 31 Vict. c. 115. In that section the incapacity is not to attach to a justice of the peace by reason only of his being as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to, or to be benefited by any fund, to the account of which the penalty payable is to be carried, or to contribute to any rate or expenses in diminution of which such penalty will go.

The Public Health Act, 1875 (sect. 258), contains provisions by which no justice of the peace shall be deemed incapable of acting in cases arising under that Act by reason of his being a member of the local authority, or being a ratepayer, or one of a class liable to contribute to, or to be benefited by any rate or fund out of which expenses are to be defrayed. The case of *R.* v. *Meyer* (L. R. 1 Q. B. D. 173; 34 L. T. R. (N.S.) 247), arose on the construction of this section. In that case M., who was chairman of the board, and had taken an active part in its proceedings, sat with three other justices on the

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bench, and adjudicated on a summons taken out by the board against a person for a nuisance. He was objected to as a justice, but he remained. The person summoned was convicted. *Held*, that M. had such an interest as gave him a real bias in the matter, consequently he ought not to have sat as a justice.

The case of *Reg.* v. *Millege and Others* (L. R. 4 Q. B. D. 332, 48 L. J. M. C. 139; 40 L. T., (N.S.) 748), arose on the same section. In that case complaint having been made to the Local Government Board of a nuisance upon premises belonging to B. in the borough of W., the board communicated with the town council of W., who were the urban sanitary authority, under the Public Health Act, 1875, and required them to abate the nuisance. The council having made inquiries, passed a resolution that steps should be taken for the removal of the nuisance, and took out a summons against B. At the hearing an order for the abatement of the nuisance was made. Two justices who were present were members of the council when the resolution was passed. *Held*, that the councillors who were judges had such an interest as might give them a bias in the matter, and consequently they ought not to have sat as justices upon the hearing of the summons, and that the rule for a *certiorari* to quash the order must be made absolute.

The case of *Reg.* v. *Lee and Others* (L. R. 9 Q. B. D. 394) arose on the same section of the Public Health Act, 1875. In the borough of Wakefield the sanitary committee of the council, who were the local authority under the Public Health Act, 1875, passed a resolution directing the town clerk to prosecute S. for exposing for sale meat unfit for human food, contrary to the provisions of the Act, and at the hearing of an information laid in pursuance of this resolution, S. was convicted before four justices of the borough, who imposed a penalty upon him. One of the justices was a member of the sanitary committee, and had been present at the meeting at which the above resolution was passed. *Held*, that sect. 258 did not remove the disqualification which attached to the justice by reason of his having acted as a member of the sanitary committee in directing the prosecution, and that a rule for a *certiorari* to bring up and quash the conviction must be made absolute.

In this case, FIELD, J., said: "I am of opinion that sect. 258 of the Public Health Act, 1875, has not the effect of enabling a person to act as prosecutor and judge in the same matter."

From that case it appears, however, that if a justice had not acted as a member of the council when directing a prosecution, he would be sufficiently disinterested to be able to sit as judge at the hearing.

A similar decision was given in the case of *Reg.* v. *Justices of Great Yarmouth.* (L. R. 8 Q. B. D. 525.)

At a special sessions for appeals against a poor-rate, the chairman of the magistrates, who was himself appellant in one of the cases for hearing, took part in the decision of all the cases except his own. When his own case was called on, he left the bench and went to the body of the court and conducted the case himself. On a rule for a *certiorari* to bring up all the orders for the purpose of quashing them, *held* by FIELD and BOWEN, J. J., that the chairman being a litigant in a matter similar to the other matters before the court, was disqualified from acting as a justice, and that the orders were bad. Before the sessions were held, the appellant gave notice to the clerk of the justices, that objection would be made "if any justices who were rated in Yarmouth heard the appeals." At the hearing this objection and

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no other was made, and it was overruled by the justices. *Held*, that the appellants were not precluded by the form of their notice from contending in support of the rule for a *certiorari* that the chairman, even if not disqualified by reason of his being rated, was disqualified by reason of his being himself a litigant, although this latter objection was not specifically mentioned in the notice or made before the justices.

By a local Act for the improvement of a borough, the corporation was made the authority for the execution of the Act, with power to direct prosecutions for this purpose. An information for an offence under the Act having been preferred by an officer on behalf of the corporation, a summons was issued upon it by a justice, who was also an alderman and member of the corporation, but came on for hearing before justices none of whom were connected with the corporation. *Held*, notwithstanding, that such justices could not proceed with the hearing of the summons, for it had been issued by one who was virtually prosecutor. (*Reg.* v. *Gibbon and Another*, L. R. 6 Q. B. D. 168.)

The decision in this case was disapproved in the case of *Reg.* v. *Handsley*, L. R. 8 Q. B. D. 383.

In the case of *Reg.* v. *The Justices of Huntingdon*, L. R. 4 Q. B. D. 522, three justices who were members of the town council of the borough, and as such had taken an active part in the making of an order under the Dogs Act, 1871, sat to hear a complaint of non-observance of the order. *Held*, that they had no such interest in the subject matter as to oust their jurisdiction.

Where by statute a member of the council may act as a justice of the peace in matters arising in his district, in order to disqualify him from acting, it is not sufficient to show that, as a member of the council, he has a pecuniary interest in the result of the information or complaint, or that the corporation, of which he is a member, are the prosecutors. It must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter.

An officer of the corporation appointed to collect the borough rate, obtained a summons against a ratepayer in arrear. In so doing he acted in the discharge of his duty, but on his own responsibility and without consulting the council. At the hearing the justices dismissed the summons, on the ground that one of the sitting magistrates being a town councillor was thereby disqualified from adjudicating upon the summons. On motion for a *mandamus* to the justices to hear and adjudicate on the summons, CAVE, J. said: "We are of opinion that in cases like the present where such a section exists, it is not enough to show merely that an adjudicating justice is a member of the town council, and, as such, has a pecuniary interest in the result of the complaint or information, or that he is a member of the corporation which is charged with the duty of prosecuting the offence which he sits to adjudicate upon; but that in order to disqualify the justice, it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter. In our opinion there is in this case no ground whatever for saying that there was any such substantial interest or likelihood of real bias, and consequently the rule must be made absolute. (*Reg.* v. *Handsley*, L. R. 8 Q. B. D. 383. *See* also *Reg.* v. *Mayor and Justices of Deal, ex parte Curling*, 45 L. T. (N.S.) 439.)

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Clerk to borough justices.

159.—(1.) The justices for a borough shall from time to time appoint a fit person to be their clerk, to be removable at their pleasure (*a*).

(2.) They shall not appoint or continue as their clerk an alderman or councillor of the borough, or the clerk of the peace of the borough, or of the county in which the borough is situate, or the partner of any such clerk of the peace.

(3.) The clerk to the justices shall not, by himself or his partner or otherwise, be directly or indirectly employed or interested in the prosecution of any offender committed for trial by those justices, or any of them, at any court of gaol delivery or quarter sessions (*b*).

(4.) If any person acts in contravention of the last foregoing provision of this section, he shall for every offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

(5.) One moiety of any fine so recovered shall, with costs, be paid to the person bringing the action to recover it.

(6.) Nothing in this Act shall prevent the justices for a borough from re-appointing as their clerk any person being clerk of the peace of the borough or of the county in which the borough is situate, or partner of any such clerk of the peace, if the person re-appointed was, on the sixth of August one thousand eight hundred and sixty-one, or has not ceased to be at the time of re-appointment, the clerk of those justices.

(*a*) Provisions are made by the 14 & 15 Vict. c. 55, and the 40 & 41 Vict. c. 43, under which clerks to the justices must be paid by salary. (*See* Appendix for the sections of the statutes relating to this subject.) As the clerk holds office during the pleasure of the justices, a *quo warranto* is not the proper method to remove him from his office.

(*b*) A person interested may, however, be appointed clerk, and the office is not vacated by the clerk becoming interested. The clerk is only liable to the penalty. (*Reg.* v. *Fox*, 1 E. & E. 729, 746; 28 L. J. M. C. 157.)

Justices room.

160.—(1.) The council of a borough having a separate commission of the peace shall provide and furnish a

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suitable justices room, with offices, for the business of the borough justices (*a*).

(2.) No room in a house licensed for the sale of intoxicating liquors may be used for this purpose.

(*a*) *See* section 105.

Stipendiary Magistrate.

Appointment of stipendiary magistrate.

161.—(1.) If the council desire the appointment of a stipendiary magistrate (*a*) for the borough, they may present a petition for the appointment to the Secretary of State, and thereupon it shall be lawful for the Queen to appoint to that office a barrister of seven years (*b*) standing.

(2.) He shall hold office during Her Majesty's pleasure.

(3.) He shall, by virtue of his office, be a justice for the borough.

(4.) There shall be paid to him such yearly salary, not exceeding, except with the consent of the council, that mentioned in the petition, as Her Majesty from time to time directs.

(5.) It shall be paid by four equal quarterly payments, and in the same proportion up to the time of his death or ceasing to act.

(6.) On a vacancy, a new appointment shall not be made until the council again make application as before the first appointment.

(7.) More than one stipendiary magistrate may be appointed for a borough.

(*a*) "Stipendiary magistrate" is used as a more appropriate phrase than "police magistrate." A stipendiary can act alone, where two other justices are required. (*See* 21 & 22 Vict. c. 73.)

(*b*) "Seven years;" this was formerly "five years" only.

Borough Quarter Sessions: Recorder: Clerk of the Peace.

Grant of separate court of quarter sessions.

162.—(1.) It shall be lawful for the Queen, on the petition to Her Majesty in Council of the council of a borough, to grant that a separate court of quarter sessions be holden in and for the borough.

(2.) The petition shall set forth the grounds of the application and the salary which the council are willing to pay to the recorder. Sect. 162.

(3.) The grant may be made on and subject to such terms and conditions, if any, as to Her Majesty in Council seem fit.

(4.) Within ten days after the receipt of the grant the council shall send a copy thereof, sealed with the corporate seal, to the clerk of the peace of the county, or each county if more than one, in which the borough or any part thereof is situate.

163.—(1.) It shall be lawful for the Queen from time to time to appoint for a borough having a separate court of quarter sessions a barrister of five years standing to be recorder of the borough. The recorder.

(2.) He shall hold office during good behaviour.

(3.) He shall, by virtue of his office, be a justice for the borough.

(4.) He shall not act as recorder, or as a justice, until he has taken the oaths required to be taken by a borough justice, and made before the mayor or two other members of the council a declaration as in the Eighth Schedule.

(5.) He shall have precedence in all places within the borough next after the mayor.

(6.) He shall not, during his office, be eligible to serve in Parliament for the borough, or be an alderman, councillor, or stipendiary magistrate of the borough; but he may be appointed revising barister for the borough, and shall be eligible to serve in Parliament except for the borough.

(7.) There shall be paid to him such yearly salary, not exceeding that stated in the petition on which the grant of a separate court of quarter sessions was made, as Her Majesty directs; but the same may at any time be increased by resolution of the council, approved by the Secretary of State, without the resignation and re-appointment of the recorder being necessary.

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(8.) A person may be appointed recorder of two or more boroughs conjointly.

The clerk of the peace.

164.—(1.) The council of a borough having a separate court of quarter sessions shall from time to time appoint a fit person to be the clerk of the peace for the borough.

(2.) The clerk of the peace shall hold office during good behaviour.

(3.) The clerk of the peace may from time to time, by writing signed by him, appoint a fit person to act as deputy for him, in case of his illness, incapacity, or absence.

(4.) The appointment of the deputy shall be signified in writing, signed by the clerk of the peace, to the council, and shall be recorded in their minutes.

(5.) Where a table of the fees to be taken by the clerk of the peace has been made by the council and confirmed by the Secretary of State, and is for the time being in force, the clerk of the peace, if paid by fees, may take the fees to which he appears by that table to be entitled.

(6.) The council may from time to time make a new table of the fees to be taken by the clerk of the peace, but shall submit every such table to the Secretary of State for confirmation, and he may confirm and allow the same, either as submitted, or with such alterations, additions, or abatements as he thinks proper, and any such table shall be of no validity until it is so confirmed (*a*).

(*a*) The clerk of the peace may be paid by salary. (*See* 14 & 15 Vict. c. 55.)

The recorder has power to remove him for misconduct in his office. (See *R.* v. *Hayward*, 2 B. & S. 585; 31 L. J. M. C. 177.) When the misconduct is otherwise than in the execution of his office two justices may exhibit against him to the quarter sessions a complaint, and the recorder may after due examination suspend or remove him. There is an appeal to the Lord Chancellor. (*See* "The Clerks of the Peace Removal" Act, 1864 (27 & 28 Vict. c. 65).)

Recorder to hold court of quarter sessions.

165.—(1.) The recorder shall hold, once in every quarter of a year, or oftener, if and as he thinks fit, or the Secretary of State directs, a court of quarter sessions in and for the borough.

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(2.) He shall sit as sole judge of the court.

(3.) The court shall be a court of record, and shall have cognizance of all crimes, offences, and matters cognizable by courts of quarter sessions for counties in England; and the recorder shall, notwithstanding his being sole judge, have power to do all things necessary for exercising that jurisdiction as fully as those courts (*a*).

(4.) But the recorder shall not, by virtue of his office, have power

(*a*.) To allow, apportion, make, or levy any borough rate; or

(*b*.) Subject to the provisions of this Act respecting appeals from a rate (*b*), to do any act in relation to the allowance, apportionment, making, or levying of any rate whatsoever; or

(*c*.) To grant any licence or authority to any person to keep an inn, alehouse, or victualling house to sell excisable liquours by retail; or

(*d*.) To exercise any power by this Act specially vested in the council.

(*a*) The recorder may hold his court of quarter sessions during the time of the assizes for the county in which the borough is situate; as his authority is not determined by the judges coming into the county to hold the assizes. (*Smith* v. *Reg.* 13 Q. B. 738; 18 L. J. M. C. 207.)

The recorder has no power to hear an appeal against the refusal of borough justices to grant a publican's licence. (*R.* v. *Deane*, 2 Q. B. 96; 1 G. & D. 292, and see *R.* v. *Bristol* (Recorder), 4 E. & B. 265. *See* also 9 Geo. 4, c. 61, s. 27.)

The recorder has cognizance of appeals against orders of removal made by borough justices notwithstanding the language of the 6th section of the 8 & 9 Will. 3, c. 30, which provides that such appeals shall be heard at the sessions for the county and not elsewhere. (*R.* v. *Salop JJ.* 2 Q. B. 85; *R.* v. *Suffolk JJ. ib.* 72.) So the recorder may try an indictment for keeping a disorderly house under 25 Geo. 2, c. 36. (*R.* v. *Charles*, 1 L. & C. 90.) Also an appeal against an order of borough justices directing payment of the expenses incurred by removing a pauper lunatic to an asylum, under 9 Geo. 4, c. 40, s. 62. (*R.* v. *St. Lawrence* (*Inhabitants*), 11 A. & E. 170.) An appeal against an order for the maintenance of a pauper lunatic, under 8 & 9 Vict c. 126, s. 62, must be to the sessions having jurisdiction in the place from which the pauper was removed; and if that place is a parish within the borough, the appeal must be to the borough, and not to the county justices. (*R.* v. *Lancashire*, 18 Q. B. 361; 21 L. J. M. C. 164. *See* also 12 Q. B. 305.) So where county justices, having concurrent jurisdiction with borough justices, have made an order of removal of a pauper from a parish within the borough, the appeal lies

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to the borough and not to the county sessions. (*R.* v. *Liverpool (Recorder)*, 15 Q. B. 1070.) And the notice of appeal under 11 & 12 Vict. c. 31, s. 9, will be sufficient, although it erroneously states the appeal will be to the county sessions. (*R.* v. *Liverpool (Recorder)*, 15 Q. B. 1070; *R.* v. *Bucks JJ.* 4 E & B. 259, *n.*; 24 L. J. M. C. 15, *n.*) As to the costs where such an erroneous notice is abandoned see *R.* v. *Leeds (Recorder)*, 3 E. & E. 561; 30 L. J. M. C. 86. Where the appellants, having given notice of appeal to the borough sessions, appeared there, when on objection being made that the appeal lay properly to the county sessions, the appeal was dismissed; it was *held* that the appellant could not afterwards treat the notice as one of appeal to the county sessions. (*R.* v. *Salop JJ.* 4 E. & B. 257; 24 L. J. M. C. 14.) A recorder has power to reserve a case for the court of criminal appeal under 11 & 12 Vict. c. 78. (*R.* v. *Masters*, 1 Den. C. C. R. 332; 3 New Sess. Ca. 326. *See* Smith's Practice at Quarter Sessions, and Archbold's Practice at Quarter Sessions.)

(*b*) Sub-sects. 9 & 10 of the 144th section.

Power to appoint deputy recorder.

166.—(1.) The recorder may, in case of sickness or unavoidable absence, appoint, by writing signed by him, a barrister of five years standing to act as deputy recorder at the quarter sessions then next ensuing or then being held, and not longer or otherwise.

(2.) But the sessions shall not be illegal, nor shall the acts of a deputy recorder be invalid, by reason of the cause of the absence of the recorder not being unavoidable.

Powers of mayor in absence of recorder and deputy recorder.

167.—(1.) In the absence of the recorder and deputy recorder, the mayor shall, at the times for the holding of the court of quarter sessions, open the court, and adjourn the holding thereof, and respite all recognizances conditioned for appearing thereat, until such day as he then and there, and so from time to time, causes to be proclaimed.

(2.) But nothing in this section shall authorize the mayor to sit as a judge of the court for the trial of offenders, or, save as aforesaid, to do any other act in the character of a judge of the court.

Power for recorder to form a second court.

168.—(1.) If at any time it appears to the recorder that the quarter sessions are likely to last more than three days, including the day of assembling, he may in his discretion, but subject to the provisions of this section,

order a second court to be formed, and appoint by writing signed by him a barrister of five years standing to preside therein, and try such felonies and misdemeanours as shall be referred to him therein.

(2.) The barrister so appointed shall be styled assistant recorder, and shall have and exercise the same powers, subject to the same regulations (save as regards the making of a declaration as in the Eighth Schedule) as the recorder; and the proceedings had by and before the assistant recorder shall be as effectual as if had by or before the recorder, and shall be enrolled and recorded accordingly.

(3.) But the assistant recorder shall not have any power or jurisdiction except while the recorder is sitting in quarter sessions; save that the assistant recorder may finish any case in which the prisoner has pleaded, and in the trial whereof the assistant recorder is actually engaged at the time when the recorder ceases to sit, and may sentence any prisoner tried before him, but not then sentenced.

(4.) If at any time during the sitting of the second court the recorder is of opinion that it is no longer required, he may direct the assistant recorder at a proper opportunity to adjourn it.

(5.) Where a second court is so formed, the clerk of the peace shall, on the request of the recorder, appoint an assistant, and the recorder shall appoint an additional crier for the second court.

(6.) The recorder shall not exercise the powers given by this section unless—

(*a.*) It has been before each quarter sessions certified to him in writing signed by the mayor or two aldermen or the town clerk that the council have resolved that it will be expedient that those powers be exercised; and

(*b.*) The name of the barrister to be appointed has at some previous time been approved by the Secretary of State as that of a fit person to be from time to time so appointed.

(7.) Where a resolution of the council is so certified,

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the resolution and certificate shall, if the resolution so provides, continue in force during twelve months from the date of the resolution, and during such continuance no fresh resolution or certificate shall be necessary.

(8.) An assistant recorder, assistant clerk of the peace and additional crier shall have remuneration as appearing by the Fourth and Fifth Schedules.

(9.) The powers given to the recorder by this section may be exercised by the deputy recorder.

(10.) Appointments made and certificates given under this section shall not be subject to any stamp duty or other tax.

Liability of borough having quarter sessions for prosecutors expenses.

169. A municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay the costs and expenses attending the prosecution of any felony committed or supposed to have been committed in the borough, and of any other offence committed or supposed to have been committed in the borough the costs and expenses attending the prosecution whereof are by law payable as in the case of a felony. The amount of those costs and expenses shall be ascertained as directed by law, and the order of the court for the payment thereof shall be directed to the treasurer of the borough (*a*).

(*a*) Can the treasurer pay these costs and expenses on the order of the court without an order of the council? This depends upon the construction to be placed on sect. 140 read in connection with the Fifth Schedule. That schedule is divided into two parts:—(1.) those payments which may be made without the order of the council; and (2.) those payments which may not be made without such order. Among the latter are the costs and expenses payable by the corporation in respect of the prosecution or punishment of offenders. It would appear, at first sight, that the treasurer cannot honour the order of the court until he has received the order of the council. This, however, would cause so much inconvenience in practice as to render it imperative that the council should make a standing order directing the treasurer to pay out of the borough fund such costs and expenses on the order of the court. Hitherto it has been the general practice for the treasurer to pay upon the production of the order of the court. A careful examination of sect 140 leads to the conclusion that the legislature did not intend to alter the law in this respect. That section, after specifying in sub sects. 1 and 2 those payments which may be made out of the borough fund, and particularizing the way in

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which such payments shall be made, goes on to specify the methods by which other payments may be made out of the borough fund; and amongst these we find the orders of the court of quarter sessions, and such orders are not required to be made by the council. It follows that the order of the court is sufficient. The expenses referred to in Rule 6 of Part 2 of the Fifth Schedule mean those incurred by the council, for which there is no order for payment by a court having authority to make the order. This construction of the Act avoids the anomaly of the court making an order requiring ratification by the council. It may be that the council would have no discretion, and might be compelled to make the order; but, then, this reduces the function of the council to a ministerial one, and is of no utility.

Sheriff.

Appointment of sheriff in counties of cities and counties of towns.

170.—(1.) The council of every borough being a county of itself, and of the city of Oxford, shall on the ninth of November in every year appoint a fit person to execute the office of sheriff.

(2.) The appointment shall be made at the quarterly meeting of the council immediately after the election of the mayor.

(3.) The sheriff shall hold office until the appointment of his successor.

(4.) He shall have the same duties and powers as the sheriff or the person filling the office of sheriff in the respective borough or city would have had if this Act had not been passed. (*a*)

(*a*) Every person appointed sheriff or under-sheriff, with the exception of sheriffs and under-sheriffs of Wales and the County Palatine of Chester, are required to take the oath prescribed by the 18th & 19th sections respectively of 3 Geo. 1. c. 15, before entering on their office. By the 20th section of the same Act, the sheriffs of Wales and the County Palatine of Chester are permitted to take the oath as formerly with the omission therein mentioned.

By the Promissory Oaths Act, 1868, 31 & 32 Vict. c. 72, sect. 12, sub-sect. 4, it is provided that where in any case not otherwise provided for by that Act, or included within the saving clauses thereof, an oath is required to be taken by any person on or as a condition of his accepting any employment or office, a declaration shall be substituted for such oath to the like effect in all respects as such oath. By the Promissory Oaths Act, 1868, it is also provided that no person shall be required or authorized to take the oaths of allegiance, supremacy, and abjuration, or any of such oaths, or any oath substituted for such oaths, or any of them, or to make any declaration to the like effect of such oaths, or any of them, except the persons required to take the oath of allegiance by that Act, and the Clerical Sub-

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scription Act, 1865, and the Parliamentary Oaths Act, 1866, or one of such Acts, any Act of Parliament, charter, or custom to the contrary notwithstanding.

The sheriff is not one of the persons required by that Act to take the oath of allegiance.

The sheriff is not disqualified from holding the office of councillor. (*See* sect. 12.) He cannot act as justice of the peace while sheriff. (*See* note on sect. 158.)

Coroner.

Appointment, fees, &c., of borough coroner in boroughs having separate quarter sessions.

171.—(1). The council of a borough having a separate court of quarter sessions shall, within ten days next after receipt of the grant thereof by the council, and thenceforward from time to time, appoint a fit person, not an alderman or councillor of the borough, to be coroner of the borough; and thereafter no person other than the coroner so appointed shall take in the borough any inquisition belonging to the office of coroner.

(2.) The coroner shall hold office during good behaviour.

(3.) A vacancy in the office shall be filled up within ten days after it occurs.

(4.) The coroner shall have, by order of the recorder, remuneration as appearing in the Fourth and Fifth Schedules.

Power of borough coroner to appoint a deputy.

172.—(1.) In case of illness or unavoidable absence, the coroner shall appoint by writing signed by him a fit person, being a barrister or solicitor, and not an alderman or councillor of the borough, to act for him as deputy coroner during his illness or unavoidable absence, but not longer or otherwise.

(2.) The mayor or two justices for the borough shall on each occasion certify by writing signed by him or them the necessity for the appointment of a deputy coroner. This certificate shall state the cause of absence of the coroner, and shall be openly read to every inquest jury summoned by the deputy coroner.

Returns by borough coroners.

173. On or before the first of February in every year the coroner shall send to the Secretary of State a

return in writing, in such form as the Secretary of State directs, of the particulars of each case in which the coroner or his deputy was called upon to hold an inquest during the year ending on the then last thirty-first of December. Sect. 173.

174.—(1.) Where a borough has not a separate court of quarter sessions no person other than the coroner for the county or district in which the borough is situate shall take in the borough any inquisition belonging to the office of coroner. Acting of county coroner in borough.

(2.) That coroner shall, for every inquisition duly taken by him within the borough, be entitled to such rateable fees and salary as would be allowed and due to him, and to be allowed and paid in like manner, as for any other inquisition taken by him within the county or district.

Borough Civil Court (a).

175.—(1.) The recorder, if there is one, shall continue to be the judge of the borough civil court, except in the following cases, that is to say, where the court is regulated by a local Act of Parliament, or where a barrister of five years standing acted at the passing of the Municipal Corporations Act, 1835, as judge or assessor of the court. Judge of borough civil court where there is a recorder.

(2.) The recorder, if judge, may, in case of his illness or unavoidable absence, appoint by writing signed by him a barrister of five years standing to act for him as deputy judge of the court at the court or courts then next to be holden, or then being holden, and not longer or otherwise.

(3.) The recorder on every occasion of his appointing a deputy judge shall forthwith send to the Secretary of State a statement of his reason for so doing.

(4.) A court shall not be illegal, nor shall the acts of the deputy judge be invalid, by reason of the absence of the recorder not being unavoidable.

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(5.) The recorder, where judge, and the deputy judge, shall have such remuneration as the council fix by bylaw.

(6.) Where the recorder is judge, the court may in his absence be holden for all purposes within the competency of the court, except the trial of issues of fact or of law, before any person, being a barrister of five years standing or a solicitor of five years practice, from time to time appointed for that purpose by the recorder by writing signed by him.

(7.) Where the recorder or his deputy is judge, all orders, affidavits, and matters, except the trial of issues in law or in fact, relating to the business of the court, if not regulated by a local Act, may be made, sworn, or done in or out of court in the absence of the recorder and his deputy by or before the registrar or such other person, being a barrister of five years standing, or a solicitor of five years practice, as the recorder appoints by writing signed by him.

(*a*) The mere disuse for 200 years of a court granted to a corporation by charter for a trial of causes, was held to be no answer to the rule for a *mandamus* commanding them to hold it, though it was alleged there were not sufficient funds for the purpose. (*Rex.* v. *Mayor, &c. of Wells*, 4 Dowl. P. C. 562. *See* also *Rex.* v. *Mayor of Hastings*, 1 D. & R. 148.)

Judge of borough civil court where there is no recorder.

176. Where there is a borough civil court, but no recorder, such officer of the borough as by the charter constituting the court, or by custom, is the judge of the court, shall continue to be and act as such judge; and the council, whether the court is regulated by a local Act or not, shall have power for that purpose to appoint the necessary officer.

Tenure of judge.

177. Every judge or assessor of a borough civil court, other than the mayor, shall hold his office during good behaviour.

Registrar and other officers and fees.

178.—(1.) Except where the town clerk acts as registrar, the council shall from time to time appoint a registrar of the borough civil court.

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(2.) The council shall from time to time appoint other requisite officers and servants of the court.

(3.) The fees to be taken by the registrar and other officers of the court shall be from time to time fixed by the council, subject to the approval of the Secretary of State.

(4.) If and as far as the fees are not so fixed, they shall be those usually taken before the passing of the Municipal Corporations Act, 1835.

Solicitors.

179.—(1.) The registrar of a borough civil court, or any other officer of the court, shall not himself, or by any partner or clerk, practise as a solicitor or attorney, in the court; nor shall any partner or clerk of the registrar act as agent for any other solicitor or attorney in the court.

(2.) Unless so disqualified, every solicitor of the Supreme Court of Judicature may practise as solicitor in the court.

Time of holding court.

180.—(1.) Each borough civil court shall be holden for trial of issues of fact and of law four times at least in each year, and with no greater interval than four months between two successive courts.

(2.) Subject as aforesaid, where the recorder is judge, the court shall be holden at such times as the recorder thinks fit, or as the Secretary of State from time to time directs.

Procedure.

181. Every personal action brought in a borough civil court shall be commenced by writ of summons.

Power for judge to make rules of procedure.

182.—(1.) Subject to the provisions of this Act, the judge of a borough civil court may from time to time make rules for regulating the times of holding the court and the procedure, practice, and pleadings therein, and the fees of solicitors therein, and may by any rule revoke or alter any former rule.

(2.) But where there is a recorder and he is not the judge of the court, every rule made by the judge shall be

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subject to the approval of the recorder in writing signed by him; save that this provision shall not apply where the recorder acts as deputy of the judge.

(3.) In every case (whether the recorder is judge or not) rules made by the judge under this section shall be subject to the approval of three judges of the High Court.

Jurisdiction of court.

183.—(1.) Where by the Municipal Corporations Act, 1835, jurisdiction was conferred on a borough civil court whereof the recorder is judge, or wherein a barrister of five years standing acts as judge or assessor, to try personal actions wherein the sum sought to be recovered does not exceed twenty pounds, and actions of ejectment between landowner and tenant wherein the annual rent of the property whereof possession is sought to be recovered does not exceed twenty pounds, no fine having been reserved or made payable, then that court shall continue to have that jurisdiction.

(2.) Any action wherein the title to land of any tenure or to any tithe, toll, market, fair, or other franchise is in question, shall not be tried in a borough civil court which before the passing of the Municipal Corporations Act, 1835, had not authority to try actions wherein such titles were in question. If it appears to such a court that such a title is in question in an action the jurisdiction of the court in the matter of the action shall cease; and the court may, if it thinks fit, award costs against the party commencing the action.

Saving for borough civil courts and for 35 & 36 Vict. c. 86.

184.—(1.) Nothing in this Act shall take away or abridge in respect of local extent, amount, or otherwise, any power, jurisdiction, or authority of a borough civil court, or of a judge, or assessor, or registrar thereof, or of any deputy of a judge, or assessor, or registrar thereof, or affect the constitution or procedure thereof; and, subject to the express provisions of this Act, such power, jurisdiction, authority, constitution, and procedure, shall continue and be as if this Act had not been passed.

(2.) Nothing in this Act shall affect the Borough and Local Courts of Record Act, 1872. Sect. 184.

Power to extend jurisdiction of borough civil court.

185. It shall be lawful for the Queen, by Order in Council, on the joint petition of the justices of a county in quarter sessions and of the council of a borough, to grant that the jurisdiction of the borough civil court shall extend over any district adjacent to the borough within the jurisdiction of those quarter sessions; and the same shall extend accordingly.

Borough Juries.

Provisions as to juries in boroughs.

186.—(1.) Every burgess of a borough having a separate court of quarter sessions or a borough civil court shall, unless by law exempt (*a*) or disqualified (*b*), be qualified and liable to serve on grand juries in the borough, and on juries for the trial of issues joined in either of those courts.

(2.) The clerk of the peace shall give public notice of the time and place of holding the court of quarter sessions ten days at least before the holding thereof, and shall, seven days at least before the holding thereof, summon a sufficient number of persons qualified and liable, to serve as grand jurors at the sessions.

(3.) The clerk of the peace and registrar of the borough civil court respectively shall also summon a sufficient number (*c*) of persons, qualified and liable to serve as jurors at every such sessions, and at the holding of every such civil court for the trial of causes, if there is any cause then to be tried.

(4.) The summons may be made by showing to the person to be summoned, or, if he is absent from his usual place of abode, by leaving with some person therein inhabiting a notice containing its substance, and signed by the clerk of the peace or registrar, as the case may be.

(5.) The clerk of the peace and registrar shall make out lists containing the surnames and other names, abodes, and descriptions of the persons summoned by them respectively.

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(6.) No person shall be summoned under this section to serve as a juror more than once in any year, unless every person qualified and liable so to serve has been already summoned once in that year.

(7.) If any person, having been duly summoned under this section, fails to attend according to the summons, or, being thrice called, does not answer to his name, or after his appearance wilfully withdraws himself from the court, he shall (unless some reasonable excuse is proved by him to the satisfaction of the court), be liable to pay a fine of such amount as the court thinks fit.

(8.) If the person on whom any such fine is imposed refuses to pay it to the person authorized by the court to receive it, the court may, then or at the next sitting, by order of the court signed by the clerk of the peace or registrar, cause to be levied, by distress and sale of the goods of the person on whom the fine is imposed, the fine, and the reasonable charges of the distress and sale.

33 & 34 Vict. c. 77.

(9.) Nothing in this Act shall affect the Juries Act, 1870.

(*a*) Persons exempt from serving on juries are the following :—

"Peers, Members of Parliament, judges, clergymen, Roman Catholic priests, ministers of any congregation of Protestant Dissenters, and of Jews whose place of meeting is duly registered, provided they follow no secular occupation except that of schoolmaster ; serjeants, barristers-at-law, certificated conveyancers and special pleaders, if actually practising ; members of the Society of Doctors of Law and advocates of the civil law, if actually practising ; attorneys, solicitors, and proctors, if actually practising and having taken out their annual certificates, and their managing clerks, and notaries public in actual practice ; officers of the Courts of Law and Equity, and of the Admiralty and Ecclesiastical Courts, including therein the Courts of Probate and Divorce, and the clerks of the peace or their deputies, if actually exercising the duties of their respective offices ; coroners, gaolers, and keepers of houses of correction, and all subordinate officers of the same ; keepers in public lunatic asylums ; members and licentiates of the Royal College of Physicians in London, if actually practising as physicians ; members of the Royal Colleges of Surgeons in London, Edinburgh, and Dublin, if actually practising as surgeons ; apothecaries certificated by the Court of Examiners of the Apothecaries Company, and all registered medical practitioners and registered pharmaceutical chemists, if actually practising as apothecaries, medical practitioners, or pharmaceutical chemists respectively; officers of the navy, army, militia, and yeomanry, while on full pay ; the members of the Mersey Docks and Harbour Board ; the master, wardens, and brethren of the corporation of Trinity House,

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of Deptford Strond; pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations, and all pilots licensed under any Act of Parliament or charter for the regulation of pilots; the household servants of Her Majesty, her heirs and successors; officers of the Post Office, commissioners of customs and officers, clerks, or other persons acting in the management or collection of the customs, commissioners of inland revenue, or employed by them or under their authority or direction in any way relating to the duties of inland revenue; sheriffs' officers; officers of the rural and metropolitan police; magistrates of the metropolitan police courts, their clerks, ushers, door-keepers, and messengers; *members of the Council of the Municipal Corporation of any borough, and every justice of the peace assigned to keep the peace therein, and the town clerk and treasurer for the time being of every such borough, so far as relates to any jury summoned to serve in the county where such borough is situate; burgesses of every borough in and for which a separate court of quarter sessions shall be holden so far as relates to any jury summoned for the trial of issues joined in any court of general or quarter sessions of the peace in the county wherein such borough is situate; justices of the peace so far as relates to any jury summoned to serve at any sessions of the peace for the jurisdiction of which he is a justice;* officers of the Houses of Lords and Commons." Sect. 9 of the Juries Act, 1870 (33 & 34 Vict. c. 77.) And by 34 & 35 Vict. c. 103, s. 30, "Every person acting as a commissioner in the execution of the Income Tax Acts to whom a certificate thereof has been granted by the Commissioners of Inland Revenue under 5 & 6 Vict. c. 35, s. 35, shall, so long as such certificate continues in force, be discharged, not only from the several offices referred to in the said enactment, but from serving on juries in the county where such person shall dwell, any statute to the contrary notwithstanding." No commissioner, officer, clerk, or other person acting in the management or service of the customs shall be compelled to serve on any jury, and section 12 of "The Juries Act, 1870," shall not apply to persons thereby exempted. (39 & 40 Vict. c. 36, s. 9.) Members of a town council are not therefore exempt from serving on juries for the borough; and justices of the peace are in like manner not exempt from serving on juries at the assizes held within the borough.

(*b*) Persons disqualified from serving are aliens, except those who have been domiciled in England for ten years and upwards, and in no other respects disqualified; persons attainted of any treason, or felony, or convicted of any crime that is infamous, unless they shall have obtained a free pardon; and any person who is under outlawry.

(*c*) "A sufficient number." This is an improvement on the old law, which provided that not less than thirty-six nor more than sixty persons should be summoned.

Exceptional Provisions.

Grants to boroughs not affected by subsequent

187. The grant to a borough of a separate commission of the peace, or of a separate court of quarter sessions, shall not be prejudicially affected by any sub-

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sequent grant to or for any county of a commission of the peace or other commission.

Trial of offences committed in counties of cities and counties of towns.

188.—(1.) Until Her Majesty is pleased to direct a commission of oyer and terminer and gaol delivery to be executed within any borough being a county of a city or county of a town, all bills of indictment for offences committed within that borough shall be preferred, and all proceedings thereon shall be had, in the manner authorized by the Act of the thirty-eighth year of the reign of King George the Third, chapter fifty-two, "to regulate "the trial of causes, indictments, and other proceedings "which arise within the counties of certain cities and "towns corporate within the kingdom."

(2.) For the purposes of that Act each borough named in the Sixth Schedule shall be considered as next adjoining the county named in conjunction therewith.

Jurisdiction in places separated from borough.

189. Where under any Act a place has ceased or ceases to be part of a borough or the liberties thereof, all matters by virtue of a local Act of Parliament or otherwise cognisable by a justice or by the quarter sessions having jurisdiction within that place shall be cognisable by the justices or the quarter sessions of the county, liberty, or jurisdiction within which the place is situate, in the same manner and subject to the same provisions as they were within the jurisdiction of the justices or the quarter sessions for that place.

PART IX.

Police.

Watch Committee; Constables.

Council to appoint watch committee.

190.—(1.) The council shall from time to time appoint, for such time as they think fit, a sufficient number not exceeding one-third of their own body (*a*), who, with the mayor, shall be the watch committee.

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(2.) The watch committee may act by a majority of those present at a meeting thereof, but shall not act unless three are so present (*b*).

(*a*) "Not exceeding one-third of their own body." These words were inserted in consequence of some alterations which the Government intended to make in the Police Bill of last session. By that Bill it was proposed to give to certain constables a right to appeal from the decision of the watch committee to a Secretary of State. The Government consented to alter the appeal so as to make it lie to the town council, with a proviso that the watch committee should not exceed in number one-third of the town council.

The Police Bill failed to become law on account of pressure of business at the close of the session. The one-third is exclusive of the mayor, who is by the statute an *ex officio* member of the committee.

(*b*) The acts of the watch committee need not be submitted to the council for their approval, except as to payments to be made under Part II. of the Fifth Schedule. (See *R.* v. *Thompson*, 5 Q. B. 477.)

Appointment, duties, and powers of borough constables.

191.—(1.) The watch committee shall from time to time appoint a sufficient number of fit men to be borough constables (*a*).

(2.) A borough constable shall be sworn in before a justice having jurisdiction in the borough, and when so sworn shall, in the borough, in the county in which the borough or any part thereof is situate, and in every county being within seven miles from any part of the borough, and in all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable has and is liable to for the time being in his constablewick, at common law or by statute, and shall obey all such lawful commands as he receives from any justice having jurisdiction in the borough or in any county in which the constable is called on to act.

(3.) The watch committee may from time to time frame such regulations as they deem expedient for preventing neglect or abuse, and for making the borough constables efficient in the discharge of their duties.

(4.) The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend (*b*), and the watch committee may at any time dismiss, any borough constable whom they think negligent

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in the discharge of his duty, or otherwise unfit for the same.

(5.) When a borough constable is so dismissed, or ceases to belong to the constabulary force of the borough, all powers vested in him as a constable by virtue of this Act shall immediately cease.

3 & 4 Vict. c. 88.

(6.) Nothing in this section shall interfere with the operations of an Act of the session of the third and fourth years of Her Majesty's reign "to amend the Act for the establishment of county and district constables;" and throughout that Act a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it (*c*).

(*a*) Constables were formerly required to take an oath of office. Now, however, by sub-sect. 4 of sect. 12 of the Promissory Oaths Act, 1868, a declaration is imperatively substituted in lieu of the oath in the case of constables. (*See* circular from Home Office, 9th July, 1881. *See* sub-sect. 2 of sect. 239.)

A borough constable cannot vote at an election for any municipal office, or for a member of parliament for the borough or the county in which the borough is situate or adjoins, or for any borough in such county. (*See* 19 & 20 Vict. c. 69, s. 9.)

No county constable can vote for the election of any person to any municipal office in any borough in his county, or in any other borough in which he has authority. (*See* 22 & 23 Vict. c. 32, s. 3.)

These statutes also prohibit constables for the borough or county endeavouring to influence voters as to the way they shall give their votes. (*See* the statutes in Appendix.)

(*b*) Under the repealed law, a justice of the peace had power not only to suspend but to dismiss, and any constable so dismissed could not be reappointed without the consent of two justices. This is now modified so as to be more consonant with actual practice.

(*c*) This Act was passed for the purpose of amending the Acts for the establishment of county district constables, and it contains provisions for the government of consolidated county and borough police forces. (*See* the statute in the Appendix.)

Quarterly returns as to borough constables.

192. The watch committee shall, on the first of January, the first of April, the first of July, and the first of October in every year, send to the Secretary of State a copy of all rules from time to time made by the watch committee or the council for the regulation and guidance of the borough constables.

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Power for constables to apprehend disorderly persons, &c.

193. A borough constable may, while on duty, apprehend any idle and disorderly person whom he finds disturbing the public peace, or whom he has just cause to suspect of intention to commit a felony, and deliver him into the custody of the borough constable in attendance at the nearest watch-house (*a*), in order that he may be either secured until he can be brought before a justice, or, where the constable in attendance is empowered and thinks fit to take bail, give bail for his appearance before a justice.

(*a*) "Watch-house." This is the same as lock-up within the 105th section.

Penalties on constables for neglect of duty.

194. If a borough constable is guilty of neglect of duty, or of disobedience to a lawful order, he shall for every such offence be liable on summary conviction to imprisonment for any time not exceeding ten days, or, in the discretion of the court, to a fine not exceeding forty shillings, or to be dismissed from his office.

Penalty for assaults on constables.

195.—(1.) If any person assaults or resists a borough constable in the execution of his duty, or aids or incites any person so to assault or resist, he shall for every such offence be liable on summary conviction to a fine not exceeding five pounds (*a*).

(2.) But nothing in this section shall prevent any prosecution by way of indictment against any such offender, except that he shall not be prosecuted both by indictment and in a summary manner for the same offence (*b*).

(*a*) Sect. 12 of the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), provides as follows: Where any person is convicted of an assault on any constable when in the execution of his duty, such person shall be guilty of an offence against that Act, and shall, in the discretion of the court, be liable to pay a penalty not exceeding £20, and in default of payment to be imprisoned, with or without hard labour, for a term not exceeding six months, or to be imprisoned for any term not exceeding six, or, in case such person has been convicted of a similar assault within two years, nine months, with or without hard labour.

The question whether the new provision in the Act, imposing a

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penalty of £5 for an assault on a borough constable in the execution of his duty, impliedly repeals the old one, imposing a penalty of £20 for the same offence on any constable, is a problem presenting some difficulty.

Where the punishment or penalty is altered in degree but not in kind, the later provision would be considered as superseding the earlier one (per Lord ABINGER in *Henderson* v. *Sherborne*, 2 M. & W. 236, and *Attorney-General* v. *Lockwood*, 9 M. & W. 391; and per MARTIN, B., in *Robinson* v. *Emerson*, 4 H. & C. 355; and see *R.* v. *Cator*, 4 Burr. 2026).

Where a later statute again describes an offence created by a former statute, and affixes a different punishment to it, varying the procedure, giving, for instance, an appeal where there was no appeal before; directing something more or different—something more comprehensive—the earlier statute is repealed by it (*per cur*) in *Mitchell* v. *Brown*, 28 L. J. M. C. 55; 2 E. & E. 267; per BRAMWELL, B., in *Ex parte Baker*, 26 L. J. M. C. 164; 2 H. & N. 219).

Where a local Act imposed on all persons engaged in gas making who suffered impure matter to flow into any stream, a penalty of £200 for every day the nuisance was continued, payable to the informer, or to the party injured, as the justices thought fit; and the Gasworks Clauses Act, 1847, afterwards imposed the same penalty on the undertakers of gasworks; it was *held* that the earlier Act was repealed as regarded such undertakers (*Parry* v. *Croydon Gas Company*, 15 C. B. (N.S.) 568; and *see* Maxwell on the Interpretation of Statutes, p. 152).

In the case of *Hill*, appellant, *Hall*, respondent, L. R. 1 Ex. D. 411, CLEASBY, B., quoted the following from Dwarris on Statutes, 2nd Edit. pp. 530, 531: "Every affirmative statute is a repeal of a precedent affirmative statute where its matter necessarily implies a negative, but only so far as it is clearly and indisputably contradictory and contrary to the former Act in the very matter, and the repugnancy such that the two Acts cannot be reconciled." GROVE, J., said: "It is common learning that one statute may be impliedly repealed by a subsequent statute necessarily inconsistent with it; but then the inconsistency must be so great that they cannot both be to their full extent obeyed."

This is so in the case under discussion. The offence cannot be punished under both statutes. They cannot both be obeyed to their full extent. It seems, therefore, the better opinion that, to the extent of the offence of *assaulting a borough constable in the execution of his duty*, the 195th section repeals the 12th section of the Prevention of Crimes Act, 1871. This is the safer solution of the problem, and one that will not defeat the ends of justice. For, in cases of serious assaults, the offenders can be indicted for a misdemeanour under the 2nd sub-section. They will then be tried at quarter sessions. There may be many reasons why the legislature should deem it prudent to limit the punishment that can be inflicted by a court of summary jurisdiction.

(*b*) Sect. 38 of 24 & 25 Vict. c. 100, provides that whosoever shall assault, resist, or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension or detention of himself, or any other person for any offence, shall be guilty of a misdemeanour.

Special Constables.

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Appointment of special constables. 1 & 2 Will. 4, c. 41.

196.—(1.) Two or more of the justices having jurisdiction in a borough shall, in October in every year, appoint, by precept signed by them, so many as they think fit of the inhabitants of the borough, not legally exempt from serving the office of constable, to act as special constables in the borough (*a*).

(2.) Every such special constable shall make a declaration to the effect of the oath set forth in the Act of the session of the first and second years of the reign of King William the Fourth, chapter forty-one, "for amending the laws relative to the appointment of special constables, and for the better preservation of the peace," and shall have the powers and immunities, and be liable to the duties and penalties, enacted by that Act.

(3.) He shall act when so required by the warrant of a justice having jurisdiction in the borough, but not otherwise.

(4.) The warrant shall recite that in the opinion of the justice the ordinary police force of the borough is insufficient at the date of the warrant to maintain the peace of the borough.

(5.) Nothing in this section shall make any person having a right to vote at a parliamentary election liable or compellable to serve as a special constable at or during the election.

(6.) Special constables shall be entitled to remuneration as appearing by the Fourth and Fifth Schedules (*b*).

(*a*) This does not supersede the general authority given to the justices under the statute mentioned in the margin to appoint special constables on the information that a riot may be apprehended. (*R.* v. *Hulton*, 13 Q. B. 592.)

As to persons exempt from serving as special constables, *see* 5 & 6 Vict. c. 109, ss. 6, 7; and 13 & 14 Vict. c. 20, s. 5.

(*b*) Generally speaking, the inhabitants of a town are the same body as the burgesses. The right to vote is nearly co-extensive with those who are qualified to be appointed special constables. It appears, therefore, that during an election the only persons who can be compelled to serve as special constables are those inhabitants who have not resided sufficiently long in a borough to entitle them to be

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placed on the burgess roll, or who are otherwise disqualified from becoming burgesses.

This is not usually a numerous class, and oftentimes one from which it is undesirable to draw special constables.

At such times it is usual to apply to other boroughs for help. To entitle constables from foreign boroughs to act as special constables, they should be appointed by the watch committee, and take the declaration in lieu of the oath, and thus obtain the protection afforded to borough constables. County constables can act in a borough by order of the chief constable of such county, or any superintendent in all cases of emergency, and in the service of the warrant of a county justice. (22 & 23 Vict. c. 32, s. 2.) 1 & 2 Will. 4, c. 41, above quoted, applies only to tumult, riot, or felony. The oath to be taken by that statute is as follows:

"I, *A.B.*, do swear that I will well and truly serve our Sovereign Lord the King in the office of special constable for the parish (or township) of , without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept and preserved, and prevent all offences against the persons and properties of his Majesty's subjects; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.

"So help me God."

By sub-sect. 4 of sect. 12 of the Promissory Oaths Act, 1868, a declaration is imperatively substituted in lieu of the above oath. (*See* Circular from Home Office, 9th July 1881. *See* also sub-sect. 2 of the 239th section.)

The provisions of the 9th section of 19 & 20 Vict. c. 69, prohibiting constables voting, do not apply to special constables.

Watch Rate.

Levy of watch rate.

197.—(1.) Where at the commencement of this Act any rate might be levied in a borough, or in any part of a borough, for the purpose of watching solely by day or by night, or for the purpose of watching by day or by night conjointly with any other purpose, the council may from time to time make and levy a watch rate on the occupiers of all hereditaments within such parts of the borough as are watched by day and by night, and as are from time to time, by order of the council, declared liable to watch rate.

(2.) The watch rate shall be made on an estimate of the net annual value of the several hereditaments rated thereto, that is to say, of the rent at which, one year with another, they might in their actual state be reasonably expected to let from year to year, the probable

annual average cost of the repairs, insurances, and other expenses necessary to maintain them in their actual state, and all rates, taxes, and public charges, except tithes or tithe commutation rentcharge (if any), being paid by the tenant.

(3.) The watch rate may be made by one rate made yearly, or by two or more rates made half-yearly or otherwise, and may be of any amount, in the discretion of the council, not exceeding in any year eightpence in the pound on the net annual value of the hereditaments rated thereto.

(4.) For the purposes of the watch rate the council and all persons concerned, including overseers, shall have all powers given to them in respect of the borough rate for ordering, making, assessing, levying, raising, collecting, or paying the same, or as near thereto as the nature of the case admits.

(5.) The provision of this Act relating to orders of vestries for the rating, in some cases, of owners, instead of occupiers, shall extend to the watch rate.

(6.) Nothing in the foregoing provisions of this section (except the general power to levy a watch rate) shall apply to any borough in which the borough fund is sufficient with the aid of the amount only of watch rate which could for the time being be raised therein under the Municipal Corporations Act, 1835, and without the aid of any borough rate, to defray the expenses of the constabulary force of the borough, with all other expenses legally payable out of the borough fund; but nothing in the present provision shall affect any benefit or right reserved by Part X., or make the borough fund liable to any expenses with which it would not be otherwise chargeable.

(7.) Nothing in this section shall affect the liability of the borough fund to make good any deficiency of the watch rate towards the expenses of the police.

(8.) Nothing in this section shall make liable to watch rate any hereditaments exempted by any local Act from payment of watch rate.

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(9.) Nothing in this section shall alter the comparative liability to watch rate of any hereditaments which are under any local Act in respect of any watch rate entitled to any deduction from, or chargeable with any increase on, an equal pound rate; but the like comparative deductions and increased charges shall be made under this section.

Watch rate in divided parish.

198.—(1.) Where part only of a parish is liable to watch rate, the overseers shall not pay out of the poor rate the amount of the watch rate charged by the council on that parish, but shall make a separate rate or assessment on the part or parts only of the parish liable to watch rate; which rate shall be made in like manner and under like regulations and with like means and remedies for recovery thereof as in the case of a rate levied in respect of the contribution towards a borough rate.

(2.) No such separate rate shall be demanded, collected, or payable until it has been allowed by two justices usually acting in and for the borough, and has been published as a poor rate is by law required to be allowed and published.

(3.) Any person who thinks himself aggrieved by such a separate rate may appeal to the recorder at the next quarter sessions for the borough, or if there is none to the next court of quarter sessions for the county wherein the borough is situate, or whereto it is adjacent; and the recorder or court shall hear and determine the same, and shall award relief in the premises as in the cases of appeal against a poor rate.

(4.) Every such separate rate may be of the rate in the pound necessary for raising the sum charged by the council, but not exceeding twopence in the pound beyond the rate in the pound at which the council have computed the watch rate charged by them.

(5.) The overseers shall account for money collected under such a separate rate as for money collected under a poor rate; and if there is a surplus in their hands, they shall pay it to the treasurer, to go to the borough fund,

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to the credit of the place for which the rate was made, and in part payment of the next watch rate laid on that place by the council.

(6.) The council or a committee appointed for this purpose, on application on behalf of any person rated to such a separate rate to be discharged therefrom, and on proof of his inability through poverty to pay the amount charged on him, may order that he be excused from the payment thereof, and may strike out his name therefrom; and the sum at which he was rated shall not thereafter be collected, nor shall any person be charged with it or be liable to account for it or for omitting to collect or receive it.

(7.) The overseers making any such separate rate may, by warrant from two justices usually acting in and for the borough, levy on every person refusing to pay the rate the amount charged on him, with the costs and charges of recovering and enforcing payment thereof, to be ascertained by the justices, by distress and sale of the offender's goods, rendering to him the overplus; and in default of such distress two justices may commit him to prison, there to remain without bail until payment of the amount and arrearages.

Warrant for levy of watch rate.

199. Any warrant required for the levy or collection of a watch rate or separate rate may be issued by the mayor, signed by him, and sealed with the corporate seal.

Watch rate to go to borough fund.

200. All money raised by a watch rate, or by a separate rate as last aforesaid, shall go to the borough fund (*a*).

(*a*) It was perhaps necessary in the Consolidation Bill to retain provisions to enable corporations to make a watch rate.

Why should not the borough rate include the contributions levied under the watch rate?

It would be well if at some future time the whole of these sections were repealed.

PART X.

Freemen.

Sect. 201. Definition of freeman.

201. In this Part the term freeman includes any person of the class whose rights and interests were reserved by the Municipal Corporations Act, 1835, under the name either of freemen or of burgesses (*a*).

(*a*) This reservation is as follows: —

Every person who now is or hereafter may be an inhabitant of any borough, and also every person who has been admitted or who might hereafter have been admitted a freeman or burgess of any borough if this Act had not been passed, or who now is or hereafter may be the wife or widow or son or daughter of any freeman or burgess, or who may have espoused or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been or may hereafter be bound an apprentice. (Sect. 2 of the Act of 1835.)

In *Prestney* v. *The Mayor, &c., of Colchester and the Attorney-General*, L. R. 21 Ch. D. 111, it was held that the effect of the saving of rights in the above section was to legalize the beneficial interests therein mentioned without reference to the legality of their origin, and in particular to obviate any objection which might otherwise arise in respect of the tendency towards a perpetuity.

In an action to establish such rights it is sufficient after stating the title of the corporation to the property in question to aver that at the time of the passing of the Act the property was not, nor ever had been, or ought to have been applied to public purposes, but then was and always had been held and applied for the particular benefit of the freemen.

Freedom not by gift or purchase.

202. No person shall be admitted a freeman by gift or by purchase.

The freemen's roll.

203. The town clerk of every borough for which at the commencement of this Act there is a freemen's roll shall continue to keep a list, called the freemen's roll.

Admission to freedom.

204. Where a person is entitled to be admitted a freeman for the purposes of this Part in respect of birth, servitude, or marriage, and claims accordingly, the mayor shall examine into the claim, and on its being established the claimant shall be admitted and enrolled by the town clerk on the freemen's roll.

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Reservation of rights of property to freemen and others.

205.—(1.) Every person who had before the passing of the Municipal Corporations Act, 1835, been admitted a freeman, or if that Act had not been passed might have been so admitted otherwise than by gift or purchase, and

(2.) Every person who for the time being is—

(*a.*) An inhabitant of a borough, or

(*b.*) Wife, widow, son, or daughter of a freeman, or

(*c.*) Husband of a daughter or widow of a freeman, or

(*d.*) Bound an apprentice,—

shall, subject to the provisions of this Part, have and enjoy and be entitled to acquire and enjoy the same share and benefit of the hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any borough or body corporate, and of any property held in whole or in part for any charitable uses or trusts, as if the Municipal Corporations Act, 1835, or this Act, had not been passed.

Limit of value and saving as to conditions precedent.

206.—(1.) The total amount to be divided among the persons whose rights are by the last foregoing section reserved shall not exceed the surplus remaining after payment of the interest of all lawful debts chargeable on the property out of which the sums so to be divided have arisen, together with the salaries of municipal officers and all other lawful expenses which, on the 5th of June, one thousand eight hundred and thirty-five, were defrayed out of or chargeable on the same.

(2.) Where, if the Municipal Corporations Act, 1835, or this Act, had not been passed, any such person would have been liable by statute, bye-law, charter, or custom, to pay any fine, fee, or sum of money to any body corporate, or to any member, officer, or servant thereof, in consideration of his freedom, or of his or her title to those reserved rights, or there was any condition precedent to any person being entitled to those rights, he or

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she shall not have any benefit in respect of those rights until he or she has paid that fine, fee, or sum to the treasurer on account of the borough fund, or has fulfilled that condition, as far as it is capable of being fulfilled according to the provisions of this Act.

Saving for power to question right.

207. Nothing in this Act shall strengthen or confirm any claim, right, or title of any freeman or of any person to the benefit of any right in this Part reserved, but the same may in every case be brought in question, impeached, and set aside, as if this Act had not been passed.

Reservation of beneficial exemptions to freemen and others.

208.—(1.) Nothing before in this Part contained shall apply to any claim, right, or title of a freeman or of any person to any discharge or exemption from any tolls or dues levied wholly or part by or for the use or benefit of any borough or body corporate.

(2.) No person shall have any such discharge or exemption except a person who, on the fifth of June, one thousand eight hundred and thirty-five, was an inhabitant, or was admitted or entitled to be admitted a freeman, or was the wife, widow, son, or daughter of a freeman, or was bound an apprentice; and every such person shall be entitled to the same discharge or exemption as if the Municipal Corporations Act, 1835, or this Act, had not been passed.

(3.) But nothing in this Act shall affect the right of any person claiming such discharge or exemption otherwise than as inhabitant or freeman, or member of a municipal corporation, or widow or kin of such an inhabitant, freeman, or member.

Reservation of parliamentary franchise, &c.

209.—(1.) Every person who, if the Municipal Corporations Act, 1835, had not been passed, would have enjoyed as a freeman, or might thereafter have acquired, in respect of birth or servitude, as a freeman, the right of voting in a parliamentary election, shall be entitled to

enjoy or acquire that right as if that Act or this Act had been passed. Sect. 209.

(2.) No stamp duty shall be chargeable on the admission of any person as a freeman in respect of birth or servitude in a parliamentary borough.

(3.) The town clerk shall do all things appertaining by law to the registration of freemen for parliamentary elections (*a*).

(*a*) *See* 32 Geo. 3, c. 58.

PART XI.

GRANT OF CHARTERS.

Power to Crown in granting charter to borough to extend to it the provisions of the Municipal Corporations Acts.

210. If on the petition to the Queen of the inhabitant householders of any town or towns or district in England, or of any of those inhabitants, praying for the grant of a charter of incorporation, Her Majesty, by the advice of Her Privy Council, thinks fit by charter to create such town, towns, or district, or any part thereof specified in the charter, with or without any adjoining place, a municipal borough, and to incorporate the inhabitants thereof, it shall be lawful for Her Majesty by the charter to extend to that municipal borough and the inhabitants thereof so incorporated the provisions of the Municipal Corporation Acts (*a*).

(*a*) The advantages of government by a town council over government by a local board are mainly the following :—

1. In elections for local boards property owners are entitled to vote, and owners and ratepayers have under certain circumstances a plurality of votes.

2. In local boards there is wanting an important element, namely, the aldermen who are elected by the members of the council.

3. The chairman of the local board is not *ex officio* a justice of the peace, whilst the mayor, during his year of office, and for one year after, is a magistrate.

4. The powers of the council are more extensive, including the much valued privilege of maintaining a police force. In a borough with a commission of the peace justice is administered by eminent citizens appointed by the Lord Chancellor. In many boroughs also there is a separate court of quarter sessions. These privileges are

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sufficient to give dignity and importance to the duties of public life in boroughs, so that the most prominent inhabitants are willing to undertake its responsibilities.

5. Councils are not liable to have their accounts audited by an auditor appointed by the Local Government Board. Such an auditor has power to surcharge any expenditure he may think to be illegal. This acts as a severe check on the natural growth of local enterprise. There is indeed, an appeal to the Local Government Board against his surcharges, and they are therefore rarely sustained; nevertheless the effect is to substitute the judgment of the central authority for that of the local body. Good men gradually weary of taking part in a performance where they are reduced to puppets.

In boroughs, auditors are elected by the ratepayers; and although there is a disposition at times to use this as a party weapon, there is no doubt that it is more consonant with the proper spirit of independence, which should characterize all worthy local self-government.

6. The council is generally trusted by Parliament with the exercise of most of its functions, without so much control as the Local Government Board exercises over local boards. Local authorities naturally rebel against the interference of a central authority that in no way represents them, or any portion of their ratepayers. In practice, however, councils find that the officials of the Local Government Board offer them valuable assistance in carrying on their work. The dislike to the principle, however, remains, and whilst the constitution of the Local Government Board is unrepresentative there will always be a hostile feeling towards it.

Reference to Committee of Council and notice of petition for charter.

211.—(1.) Every petition for a charter under this Act shall be referred to a Committee of the Lords of Her Majesty's Privy Council (in this Part called the Committee of Council).

(2.) One month at least before the petition is taken into consideration by the Committee of Council, notice thereof and of the time when it will be so taken into consideration shall be published in the London Gazette, and otherwise in such manner as the Committee direct for the purpose of making it known to all persons interested.

Power by charter to settle wards, and by fixing dates and otherwise to adapt the Municipal Corporations Acts to first

212.—(1.) Where Her Majesty by a charter extends the Municipal Corporation Acts to a municipal borough it shall be lawful for Her Majesty, by the charter, to do all or any of the following things:

(*a.*) To fix the number of councillors, and to fix the number and boundaries of the wards (if any), and to assign the number of councillors to each ward; and

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constitution of new borough.

(*b.*) To fix the years, days, and times for the retirement of the first aldermen and councillors; and

(*c.*) To fix such days, times, and places, and nominate such persons to perform such duties, and make such other temporary modifications of the Municipal Corporations Acts, as may appear to Her Majesty to be necessary or proper for making those Acts applicable in the case of the first constitution of a municipal borough.

(2.) The years, days, times, and places fixed by the charter, and the persons nominated therein to perform any duties, shall, as regards the borough named in the charter, be respectively substituted in the Municipal Corporations Acts for the years, days, times, places, officers, and persons therein mentioned, and the persons so nominated shall have the like powers, and be subject to the like obligations and penalties, as the officers and persons mentioned in those Acts for whom they are respectively substituted.

(3.) Subject to the provisions of the charter authorized by this section, the Municipal Corporations Acts shall, on the charter coming into effect, apply to the municipal borough to which they are extended by the charter; and, where the first mayor, aldermen, and councillors, or any of them, are named in the charter, shall apply as if they were elected under the Municipal Corporations Acts, and, where they are not so named, shall apply to their first election.

Scheme or continuance or abolition of and adjustment of rights of existing local authority and officers.

213.—(1.) Where a petition for a charter is referred to the Committee of Council, and it is proposed by the charter to extend the Municipal Corporation Acts to the municipal borough to be created by the charter, the Committee of Council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority.

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(2.) The scheme, so far as it appears to the Committee of Council to be necessary or proper for carrying into effect the said adjustment as regards any local authority existing at the time of the making of the scheme, may contain provisions for the continuance of that authority, or for the abolition, total or partial, of that authority, or for the creation of another authority or authorities, and the alteration of the district of the existing local authority, and the union or other relation of the existing local authority and the authority or authorities so created, and for the continuance, modification, transfer, vesting, and extension to the whole of the borough of all or any of the powers, rights, privileges, franchises, duties, property, and liabilities of the existing local authority, and may contain such provisions as appear to the Committee of Council to be necessary or proper for fully carrying into effect any such adjustment and provisions as aforesaid.

(3.) The scheme, when settled by the Committee of Council, shall be published in the London Gazette, and shall not be of any effect unless confirmed as hereinafter mentioned.

(4.) Where, within one month after the publication of the scheme in the London Gazette, a petition against it by any local authority affected thereby, or by not less than one twentieth of the owners and ratepayers of the borough (such twentieth to be one-twentieth in number of the owners and ratepayers of the borough taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the borough and the owners and ratepayers in all cases to include women not under coverture) has been received by the Committee of Council, and is not withdrawn, the scheme shall require the confirmation of Parliament, and the Committee of Council may, if they think fit, submit it to Parliament for confirmation; but otherwise, at any time after the expiration of the said month, or after the withdrawal of any petition that has been presented, the Committee of Council may, if they think fit, submit the scheme for con-

firmation, either to Parliament or to Her Majesty in Council, and in the latter case it shall be lawful for Her Majesty to confirm the scheme by Order in Council. Sect. 213.

(5.) A scheme, when confirmed by Parliament or by Order in Council, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the scheme were part of this Act.

(6.) A local authority for the purposes of this Part means a sanitary authority (not being the mayor, aldermen, and burgesses of a borough subject to the Municipal Corporations Acts), also the corporation of a borough not subject to the Municipal Corporations Acts, a burial board, trustees, commissioners or other persons who, as a public body and not for their own profit, act under any Act for paving, lighting, supplying with water or gas, cleansing, watching, regulating or improving any town or place, or for providing or maintaining a cemetery or market in or for any town or place, and any commissioners, trustees, or other persons (not being justices) maintaining any police force, and any other authority not in this section excepted, and not being a school board, and having powers of local government and of rating for public purposes.

(7.) The district of a local authority for the purposes of this section means the area within which such authority can exercise any powers or rights.

Supplemental provisions as to scheme and charter. 24 & 25 Vict. c. 47.

214.—(1.) A scheme shall, before being settled by the Committee of Council, be referred for consideration to the Secretary of State and the Local Government Board, and, if and as far as it is intended to affect any authority which is a harbour authority within the meaning of the Harbours and Passing Tolls, &c., Act, 1861, to the Board of Trade.

(2.) A scheme shall in every case provide for placing the new borough within the jurisdiction of the council as the sanitary authority.

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(3.) The regulations contained in the Seventh Schedule with respect to the scheme shall be observed.

(4.) If the Committee of Council are satisfied that a local authority or other petitioners have properly promoted or properly opposed a scheme before them, and that for special reasons it is right that the reasonable costs incurred by the authority or other petitioners in such promotion or opposition should be paid as expenses properly incurred by the local authority in the execution of their duties, the Committee of Council may order those costs to be so paid, and they shall be paid accordingly.

Provision as to police force in new borough.

215. Nothing in any scheme or in the Municipal Corporation Acts shall authorize the establishment in a borough to which a charter is granted under this Act of a new separate police force not consolidated with the county police force, unless the district incorporated by the charter contained twenty thousand inhabitants or upwards, according to the census taken next before the date of the incorporation.

Validity of charters.

216.—(1.) A charter creating a municipal borough which purports to be granted in pursuance of the royal prerogative and in pursuance of or in accordance with this Act, shall after acceptance be deemed to be valid and within the powers of this Act and Her Majesty's prerogative and shall not be questioned in any legal proceeding whatever.

(2.) Every such charter shall be laid before both Houses of Parliament within one month after it is granted, if Parliament is then sitting, or if not, within one month after the beginning of the then next sitting of Parliament.

Power to settle scheme in case of recent charters.

217. Where a charter was granted to a borough within seven years before the fourteenth of August one thousand eight hundred and seventy-seven, the Com-

mittee of Council, on the petition to the Queen of the council of the borough, or of any existing local authority whose district comprises the whole or any part of the area of the borough, either with or without any adjoining or other place, may settle a scheme under this Act in like manner as if the petition for the grant of a charter to the borough had been referred to the Committee of Council after the commencement of this Act, and the provisions of this Act with respect to a scheme shall apply accordingly, with the necessary modifications; and if within one month after the publication of the scheme in the London Gazette a petition against the scheme from the council of the borough has been received by the Committee of Council and is not withdrawn the scheme shall require the confirmation of Parliament. Sect. 217.

Power to amend scheme.

218.—(1.) Where a scheme for a borough has been confirmed under this Part, or any former enactment, and the municipal corporation of the borough or one-twentieth of the owners and ratepayers of the borough (estimated as in this Part mentioned), or a local authority affected by the scheme, petition the Queen for an amending scheme, the petition shall be referred to a Committee of the Lords of Her Majesty's Privy Council (included in the term the Committee of Council in this Part), and shall be proceeded on, and this Part shall apply thereto, as nearly as may be, as if the same were a petition for a charter extending the Municipal Corporations Acts to a municipal borough to be incorporated.

(2.) The Committee of Council, if they think fit to submit the amending scheme for confirmation, shall submit the same to Parliament, or they may submit the same to her Majesty in Council, if the original scheme was confirmed by Order in Council; and in the latter case it shall be lawful for Her Majesty to confirm the amending scheme by Order in Council.

(3.) An amending scheme, when confirmed by Parliament, or by Order in Council, as the case may require,

Sect. 218. shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the amending scheme were part of this Act.

PART XII.

Legal Proceedings.

Prosecution of offences and recovery of fines.

219.—(1.) In summary proceedings for offences and fines under this Act the information shall be laid within six months (*a*) after the commission of the offence.

(2.) Any person aggrieved by a conviction of a court of summary jurisdiction under this Act may appeal therefrom to a court of quarter sessions (*b*).

(3.) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court.

(*a*) "Month" means calendar month. *See* 13 & 14 Vict. c. 21, s. 4, which enacts that in subsequent statutes the word month shall mean calendar month, unless words be added showing lunar month to be intended. As to whether calendar or lunar month is intended in contracts, see *Hutton* v. *Brown*, 45 L. T. R. (N.S.) 343.

(*b*) *See* 31st section of the Summary Jurisdiction Act, 1879.

Exclusion of *certiorari*.

220. A conviction, order, warrant, or other matter made or done or purporting to be made or done by virtue of this Act shall not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by *certiorari* or otherwise into the High Court.

Application of penalties in quarter sessions boroughs.

221.—(1.) Where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a

separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough.

(2.) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered—

(*a.*) Directs payment thereof to the informer or to any person aggrieved; or

(*b.*) If passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund; or

(*c.*) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown (*a*).

(*a*) Where an offender was convicted before the justices in a borough having a separate court of quarter sessions, and was sentenced to pay a fine, such fine must be paid to the treasurer of the borough, notwithstanding that the statute under which the conviction had taken place declares that the penalty shall be payable to Her Majesty. (*Attorney-General* v. *Moore*, L. R. 3 Ex. D. 276.)

Where a borough has a separate commission of the peace, but not a separate court of quarter sessions, the justices of such borough, in the exercise of their summary jurisdiction, act for the county, and any penalty must, under 11 & 12 Vict. c. 43, s. 31, be paid to the treasurer of the county. The fact that the borough has a separate commission of the peace makes no difference. (*See* the last-named statute, and the following cases decided thereon: *Mayor, &c., of Reigate* v. *Hart*, L. R. 3 Q. B. 244; *Winn* v. *Mossman*, L. R. 4 Ex. 292.)

Duties of clerk of peace as to fines and forfeitures.

222. Where the offices of town clerk and clerk of the peace for a borough are not held by the same person, the clerk of the peace shall perform all duties imposed on the town clerk by the Act of the third year of King George the Fourth, chapter forty-six, "for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated;" and the clerk of the peace shall make all returns, issue all processes, and do all other acts required by that Act to be made, issued, and done by the town clerk.

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Service of summons or warrant.

223. Any summons for appearance, warrant to enforce appearance, warrant for apprehension, or search warrant, may, if issued by a justice for a borough, be served or executed in any county wherein the borough or any part thereof is situate, or within any distance not exceeding seven miles from the borough, and, within those limits, shall have the same effect as if it had been issued or indorsed by a justice having jurisdiction in the place where it is served or executed, and may be served or executed by the constable or special constable to whom it is directed.

Procedure in penal actions against corporate officers.

224.—(1.) An action to recover a fine from any person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough, and shall not lie unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose.

(2.) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs.

(3.) Unless judgment is given for the plaintiff, the defendant shall be entitled to costs, to be taxed as between solicitor and client.

(4.) Where any such action is brought against a person on the ground of his not being qualified in respect of estate, it shall lie on him to prove that he was so qualified.

(5.) A moiety of the fine recovered shall, after payment of the costs of action, be paid to the plaintiff.

Quo warranto and *mandamus.*

225.—(1.) An application for an information in the nature of a *quo warranto* against any person claiming to

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hold a corporate office shall not be made after the expiration of twelve months from the time when he became disqualified after election (*a*).

(2.) In the case of such an application, or of an application for a *mandamus* (*b*) to proceed to an election of a corporate officer, the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called the respondent) at any time not less than ten days before the day in the notice specified for making the application.

(3.) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.

(4.) The applicant shall deliver with the notice a copy of the affidavits whereby the application will be supported.

(5.) The respondent may show cause in the first instance against the application.

(6.) If sufficient cause is not shown, the court, on proof of due service of the notice, statement, and copy of affidavits used in support of the application, may, if it thinks fit, make the rule for the information or *mandamus* absolute.

(7.) The court may, if it thinks fit, direct that any issue of fact on an information be tried by jury in London or at Westminster.

(8.) The court may, if it thinks fit, direct that any writ of *mandamus* issued shall be peremptory in the first instance.

(*a*) In *Reg.* v. *Hodson*, 4 Q. B. 684, *n*, it was held too late to move on the 29th January for a *quo warranto* information against a burgess who had been put on the roll which came into operation on the 1st November previously.

In *Ex parte Hindmarsh*, L. R. 3 Q. B. 12, the court refused a *quo warranto* on the ground of delay. The court will not grant a *quo warranto* on the ground of alleged irregularity in an election to a public office unless the result of the election has been affected thereby. (*Reg.* v. *Cousins*, L. R. 8 Q. B. 216, *n*.)

The court will make a rule for a *quo warranto* information absolute, though the defendant has resigned his office. (*Reg.* v. *Blizard*, L. R. 2 Q. B. 55.)

The court will not allow an information in the nature of a *quo warranto* to be filed to try the title to an office merely because there

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has been an irregularity in an election, in the absence of bad faith, and where the result of the election has not been affected, and no mischief has been done. (*Reg.* v. *Ward*, L. R. 8 Q. B. 210.)

The qualification of a voter on the roll cannot be questioned in a *quo warranto* against the person elected. (*Reg.* v. *Tugwell*, L. R. 3 Q. B. 704.)

The judgment of Lord Chief Justice DENMAN, in the case of *Reg.* v. *Preece*, is of considerable importance. Lord DENMAN said:—

"This was a rule for a *quo warranto* against the Mayor of Carnarvon. The first objection to his title was that he did not accept his office within the five days after notice required by statute 5 & 6 Will. 4, c. 76, s. 51, and therefore his election became void. The notice was argued on one side to mean no more than the declaration of the result of the election, which, it was said, all persons elected are bound to know; on the other hand, it was said to mean nothing less than a formal notification by some proper authority. The fact lay between the defendant being in London on the 9th, when the election took place, and from that time till the 23rd, when he returned to Carnarvon, and took the oath of office within five days; but he was in the meantime, while in London, made aware by family letters and the congratulations of friends whom he casually met, but not from any official source that he was elected.

"We are of opinion that casual information is not sufficient, and that, before an elected officer can be visited with the heavy penalties imposed for neglecting to accept his office, he must have regular notice of his own election, either by being actually present when it is announced, or by being apprised of the fact by some official authority.

"But the validity of this election is challenged on another ground—namely, that he was not well elected alderman, and had been elected mayor as such alderman. But his election to the former office had taken place more than twelve months before this rule was moved for. It was admitted, therefore, that no application could then have been made to remove him from his office of alderman by virtue of statute 7 Will. 4 and 1 Vict. c. 78, s. 23; and that, if removed from the office of mayor, he would still remain a good alderman; and this acquiescence by the present relator, and by all the world, was urged as a reason why, in the exercise of our discretion, we should refuse to interfere by information against him. To meet the objection *Rex* v. *Stokes* was relied on. That was decided on statute 32 Geo. 3, c. 58, ss. 1-2, the latter of which protected parties from impeachment by *quo warranto* by reason of any defect of title in the persons electing, nominating, swearing them into office, or admitting them, if such last-named person had been ten years *de facto*, and with title unquestioned, in his office; and this section was held not to apply where the defect was in the title of the party himself to a former office, which formed, in part, his qualification to that in question. At least, this was held so doubtful that the rule was made absolute. No further proceedings in the case are reported, nor do we find upon inquiry that the point ever came for final decision before the court upon the record. It cannot be denied that there is a strong analogy between that case and the present; and in a case in which we had less free discretion to exercise than in the granting or refusal of a *quo warranto* it might properly bind us. But, upon consideration, we think that we shall best advance the policy of the modern statute, and pre-

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serve the peace of municipal bodies, by refusing to make the rule absolute.

"It seems to us highly objectionable that the title, which has not been questioned, and cannot be questioned, to the inferior office should be impeached at a subsequent period when the title to a higher office has been built upon it; and that there is an absurdity in ousting a mayor because he is not a good alderman, who, upon his ouster, must immediately be remitted to his office of alderman, and cannot be disturbed in it. It is certainly just that objections intended to be made should be brought forward promptly, while the facts are recent and easily capable of proof or explanation; and it contributes neither to the independence of the office, nor to the harmony of corporations, if such objections are allowed to be kept in reserve, and brought forward in case the conduct of the officer is displeasing to the objector, or he aspires, as he has a right to do, to some higher office. No inconvenience can result to others from the present mayor retaining his office, as the statute 7 Will. 4 and 1 Vict. c. 78, s. 1, makes him a good presiding officer at all corporate meetings for election of others at which the mayor ought to preside. Nor could any benefit result from the rule being made absolute, as no judgment of ouster could, with the utmost diligence, be obtained against him till within a very few days of the expiration of his year of office.

"Upon these grounds, therefore, we think this rule ought to be discharged." (5 A. & E. Q. B. R. (N.S.) 94.)

The case of *Reg.* v. *Francis*, 18 Q. B. 526, was an information in the nature of a *quo warranto* against F., who held the office of councillor. It appeared that F. was elected a councillor on the 1st November, 1846, and was re-elected on the 1st November, 1849. In 1843 he undertook, at the request of the mayor and town clerk, to collect, arrange, and bind the books of the corporation. No sum was fixed for his remuneration; but in 1849, whilst still engaged in the undertaking, he agreed to complete the work for £150 as the amount of his actual disbursements and expenses. This offer was accepted by the town council, but the corporation seal was not affixed to the resolution, nor was any contract under seal made with F.

In July, 1849, F. received £50 on account. He received no further sum, nor did he proceed with his undertaking since his re-election. The relator was elected a councillor for the first time in November, 1849.

Lord CAMPBELL, C. J., said: "It is quite clear that the contract in question is within the provisions of statute 5 & 6 Will. 4, c. 76, s. 28, so as to disqualify from holding office. We cannot look to see whether it be a contract upon which he could sue the corporation. It is, at all events, one in respect of which he has been employed and paid by the corporation, and it would be monstrous to hold that the statute was avoided by the fact of the contract not being binding upon the corporation. As to the lateness of the application, if the relator had been a member of the council at the time when the contract was entered into, that might have been a ground for refusing a *quo warranto;* but he was not, and his mere knowledge of the existence of the contract at that time is not a ground for holding that he cannot now appear as the relator. With respect to statute 7 Will. 4 & 1 Vict. c. 78, s. 23, I think that this is a continuing contract, so as to create a disqualification *de die in diem*. No application for a *quo warranto* could be made after the lapse of twelve

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calendar months after the contract had ceased; but while it continues the application may be made at any time after its commencement."

By 5 & 6 Will. 4, c. 76, ss. 25, 28, it was provided that no person should be qualified to be elected, or to be an alderman of any borough, who should not be entitled to be on the burgess list. By 32 & 33 Vict. c. 55, s. 1, it was provided that every person who, on the last day of July in any year, should have occupied any house, warehouse, &c., in any borough for the whole of the preceding twelve months should, if duly enrolled, be a burgess of the borough. By 7 Will. 4 & 1 Vict. c. 78, s. 23, it was provided that every application to the Court of Queen's Bench, calling upon any person to show by what warrant he claims to exercise a corporate office, should be made before the end of twelve months after the time when the person should have become disqualified. S. was elected in 1868 an alderman of a borough, being then on, and entitled to be on, the burgess roll. In October, 1873, he was struck off the new burgess list, having ceased to occupy the qualifying premises many months before. On the 6th of January, 1874, he acted as an alderman, and on the 26th of January application was made for a *quo warranto*. *Held*, that S. became disqualified when he ceased to occupy (which was conceded to be more than twelve months ago), and so ceased to be entitled to be on the burgess list, and that the application was, therefore, too late. (*Ex parte Birkbeck*, L. R. 9 Q. B. D. 256.)

The relator need not be a burgess. It is sufficient if he is an inhabitant of the borough, subject to the control and government of the corporation. (See *R.* v. *Hodge*, 2 B. & A. 344; *R.* v. *Parry*, 6 A. & E. 848; *R.* v. *Quayle*, 11 A. & E. 508.)

Where the application is made by individuals, and not by a corporation or the mayor, the court will exercise a large discretion in granting a rule for an information. As to the circumstances under which the real relator, who has put forth an indigent relator, will be compelled to pay costs, see *R.* v. *Greene*, 4 Q B. 646.

As to the circumstances under which the relator will obtain his costs, notwithstanding the defendant declines to defend, see *R.* v. *Sidney*, 20 L. J. Q. B. 269.

(*b*) By the Corrupt Practices (Municipal Elections) Act (35 & 36 Vict. c. 60), s. 12, now repealed, it is enacted that the election of any person at an election for a borough may be questioned by petition before an election court constituted under that Act, on the ground that the election was wholly avoided because "he was at the time of the election disqualified for election to the office for which the election was held," and that "an election shall not, except in the manner provided by this Act, be questioned upon an information in the nature of a *quo warranto*, or by or in any other process or manner whatsoever for a matter for which it might be questioned under the provisions of this Act."

Held, that the remedy under this section was by petition, and not by *mandamus*. (Reg. on the prosecution of *Owen* v. *Mayor, &c., of Welchpool*, 35 L. T. (N.S.) 594.)

Sect. 226. Provisions for protection of persons acting under Act.

226.—(1.) An action, prosecution, or proceeding against any person (*a*) for any act done in pursuance or execution or intended execution (*b*) of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act or thing is done or omitted (*c*), or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.

(2.) Where the action is for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action (*d*).

(3.) Subject and without prejudice to any other powers, the council, where the defendant in any such action, prosecution, or other proceeding is their officer, agent, or servant, may, if they think fit, except so far as the court before which the action, prosecution, or other proceeding is heard and determined otherwise directs, pay out of the borough fund or borough rate all or any part of any sums payable by the defendant in or in consequence of the action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine, or otherwise (*e*).

(*a*) By sect. 7 "person" includes a body of persons corporate or unincorporate.

(*b*) "Or intended execution." These words are new.

(*c*) "Or omitted." These words are new. They have been added to meet the decision in *R.* v. *Burrell*, 12 A. & E. 460.

(*d*) Under the repealed provision notice of action was required, and no provisions have been made in the Consolidation Act in lieu thereof. Notice of action is never necessary unless where it is

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expressly required by statute. The 5 & 6 Will. 4, c. 97, s. 4, applies only to those cases where notice is required.

(*e*) *See* notes on the Fifth Schedule, Part II. The whole of this sub-section is new.

Power for borough constables to take bail.

227.—(1.) Where a person charged with a petty misdemeanour is brought without the warrant of a justice into the custody of a borough constable during his attendance at a watch-house in the borough, at any time (by day or night) (*a*) at which a justice is not actually sitting for the public administration of justice at the justices' room, or town hall, or other place used for that purpose in the borough, the constable may, if he thinks fit, take bail without fee from that person, by recognisance conditioned for his appearance for examination within two days before a justice in the borough at some time and place therein specified.

(2.) A recognisance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if taken before a justice.

(3.) The constable shall enter in a book, kept for that purpose in every watch-house, the name, residence, and occupation of the person entering into the recognisance, and of his surety or sureties, if any, with the condition of the recognisance, and the sums acknowledged.

(4.) The constable shall lay the book before the justice present at the time when and place where the recognisor is required to appear.

(5.) If the recognisor does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognisance to be drawn up and signed by the constable, and shall return the same to the next court of quarter sessions for the borough, or, if the borough has no separate court of quarter sessions, for the county in which the borough is situate, with a certificate at the back thereof, signed by the justice, that the recognisor has not complied with the obligation therein contained.

(6.) The clerk of the peace shall make the like estreats

and schedules of every such recognisance as of recognisances forfeited in quarter sessions. Sect. 227.

(7.) If the recognisor applies by any person on his behalf to postpone the hearing of the charge against him, and the justice thinks fit to consent thereto, the justice may enlarge the recognisance to such further time as he appoints.

(8.) When the matter is heard and determined, either by the dismissal of the charge, or by binding over the recognisor to answer the matter of the complaint at quarter sessions, or otherwise, the recognisance for his appearance before a justice shall be discharged without fee.

(*a*) The provision enabling the constable to take bail in the day time is new.

PART XIII.

General.

Boundaries.

Boundaries of boroughs and transfer of parts to counties.

228.—(1.) Every place at the commencement of this Act included within each borough then existing, and no other place, shall be part of the borough, and in each borough then existing which is a county of itself, shall be part of that county and of no other, as if this Act had not been passed.

(2.) Where under the Municipal Corporations Act, 1835, or any Act amending it, any such county or borough does not, at the commencement of this Act, include a place which, before the passing of the Municipal Corporations Act, 1835, was part thereof, that place shall continue to be part of the county wherein it is situate, or with which it has the longest common boundary, as if this Act had not been passed.

(3.) But nothing in this Act shall prevent any gaol, house of correction, lunatic asylum, court of justice, or judges' lodging, which at the passing of the Municipal Corporations Act, 1835, was, and at the commencement

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of this Act is, taken to be, for any purpose, in any county, from being still, for that purpose, taken to be in that county, as if this Act had not been passed.

(4.) Any gaol, court, depôt for arms, and any land thereto belonging, which at the commencement of this Act is parcel of a county shall continue to be parcel of the county, and under the exclusive jurisdiction of the authorities of the county, as if this Act had not been passed.

(5.) Nothing in this Act shall be construed to affect the assessments of the land tax or assessed taxes, as those assessments exist at the commencement of this Act, or to extend or diminish the jurisdiction of any commissioners of those taxes, as such commissioners then exist; but all lands, and all parishes, parts of parishes, and places shall continue to be charged as at the commencement of this Act towards the land tax charged on the county or other district whereof at the commencement of this Act they are part, and to be subject in that behalf to the jurisdiction of the commissioners of the same county or other district, as if this Act had not been passed.

Adjustment between boroughs and counties on change of boundaries.

229. If any place, which under the Municipal Corporations Act, 1835, or any Act amending it, ceased to be included in a borough or county of a town or city, was before the passing of the Municipal Corporations Act, 1835, liable to contribute to any rate for satisfying any lawful debt to which the ratepayers of that borough or county were then liable, and if after the commencement of this Act any difference arises concerning the proportion of that debt to be contributed in respect of that place, the Secretary of State, on the application of the council, or of the chairman of a public meeting of the ratepayers of the place, may appoint by writing under his hand a barrister not having any interest in the question to arbitrate between the parties, and by his award under his hand and seal to assess the proportion aforesaid, if any; and the arbitrator shall assess the costs of the arbitration, and direct by whom and in what proportion and out of what fund they shall be paid; and the rate aforesaid shall continue to be levied by

warrant of the council and to be paid by the place aforesaid to the treasurer of the borough, as if the Municipal Corporations Act, 1835, or any Act amending it, or this Act, had not been passed, until the proportion aforesaid is satisfied, and no longer. Sect. 229.

Time.

230.—(1.) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified. Computation of time.

(2.) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3.) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time (*a*).

(*a*) This section is intended to provide one system of computing time. Its provisions are somewhat obscure, and as an error in computation of time may prove fatal (see *Howes and Pierce* v. *Turner and Wright*, L. R. 1 C. P. D. 670), special attention should be paid to them.

Note. Sect. 230.

The following expressions limiting periods of time in days are used in the Act :—

1st.—"*Within twenty-one days*" *after an occurrence* (sect. 17 (4), sect. 18 (3); "*within ten days*" *after an occurrence* (sect. 25 (6)); "*within fourteen days*" *after notice* (sect. 66 (1)); "*within five days*" *after notice* (sect. 34 (1)); and elsewhere. These expressions present no difficulty. The day of the occurrence or notice is not to be counted, and the act is to be done on the last day of the limited time.

2nd.—"*Nine days at least*" *before the day for the election* (sect. 54); "*seven days at least*" *before the day of election* (Third Sched. Pt. II. R. 7). The days in each of these cases are clearly exclusive of the day of the notice or occurrence. The section provides that the act or proceeding shall be done *at the latest on the last day of the limited time as so computed.* Does this mean, in the cases last mentioned, on the 9th and 7th days respectively, supposing those days do not fall within the rule for Sundays, &c. ? It appears not, for the period limited is not nine and seven days respectively, but 9 + 1, and 7 + 1 ; for the proceeding is to take place on the day after the expiration of the days named, and the last day of the limited time referred to in the section, excludes the day of the proceeding. The practice, therefore, in this respect is not altered.

3rd.—"*Three clear days at the least*" *before any meeting* (Second Sched. R. 5). If the observations under the 2nd group of expressions are well founded, there will be no difficulty in concluding that the last day of the limited time so computed means 3+1 ; and that the day of the meeting must be excluded from the computation of the three days as well as the day of the notice.

The word "clear," has been imported from the Act of 1835, but the expression appears to have the same meaning as three days at least. (See *Howes and Pierce* v. *Turner and Wright*, 1 R. 1 C. P D. 670.)

When the period of time *within* which an act or proceeding is directed or allowed to be done or taken does *not exceed seven days*, Sundays, Christmas day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, are not to be reckoned in the computation.

It is clear that the expression "*seven days at least*," marks a period of time exceeding seven days, and does not come within the third sub-section. Therefore, in computing the time under Rule 7, Third Sched., Pt. II., Sundays, &c., are to be counted. It has been doubted whether the expression "*three days at least before*" an occurrence is within this sub-section, as there is not a period of time *within* which an act or proceeding is directed or allowed to be done or taken ; but only a period of time *after* which an act or proceeding may be done or taken. It seems, however, the better opinion that the sub-section does apply to such a case. *If, therefore, a council is to be held on Monday, the notices must be served on the previous Wednesday, as Sunday will not count as one of the three days previous notice*; *and when any one of the other days intervene, the notice must be served a day earlier* (3rd sub-section).

By 43 & 44 Vict. c. 9 (Definition of Time Act, 1880), it is provided that whenever any expression of time occurs in any Act of Parliament, deed, or other legal document, the time referred to shall, unless it is otherwise specially stated, be held, in the case of Great Britain, to be Greenwich mean time.

Distance.

Measurement of distances.

231. The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey.

Notices.

Notices on town hall.

232. Any notice or other document required by this Act to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates.

Inspection and Copies.

Inspection of documents.

233.—(1.) The minutes of proceedings of the council shall be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom.

(2.) A burgess may make a copy of or take an extract from an order of the council for the payment of money.

(3.) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4.) The abstract of the treasurer's accounts shall be open to the inspection of all the ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.

(5.) The Freemen's Roll shall be open to public inspection, and the town clerk shall deliver copies thereof to any person on payment of a reasonable price for each copy.

(6.) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

(7.) If a person having the custody of any document in this section mentioned,—

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(*a*) Obstructs any person authorized to inspect the same in making such inspection thereof as in this section mentioned; or

(*b*.) Refuses to give copies or extracts to any person entitled to obtain the same under this section;

he shall, on summary conviction, be liable to a fine not exceeding five pounds.

Fees.

Tables of fees to be posted.

234. The town clerk of every borough shall cause a true copy of the tables of fees for the time being authorized to be taken by the clerk of the peace (if any) for the borough, by the clerk to the justices (if any) for the borough, and by the registrar and officers of the borough civil court (if any), to be posted conspicuously in the following places:

(*a*.) The room where the business of the town clerk's office is transacted;

(*b*.) The room, if any, where the justices of the borough sit for transacting their business;

(*c*.) The room, if any, where the court of quarter sessions of the borough is held; and

(*d*.) The room, if any, where the borough civil court is held.

Seals and Signatures.

Forgery.

235. If any person forges the seal or signature affixed or subscribed to a byelaw made under this Act, or the signature subscribed to any minute of proceedings of the council, or tenders in evidence any such document with a false or counterfeit seal or signature, knowing it to be false or counterfeit, he shall be liable to imprisonment with hard labour for any term not exceeding two years.

Applications to Treasury.

Notice of application to and correspondence with Treasury.

236.—(1.) Where the council intend to apply to the Treasury for their approval of any sale, loan, or other financial arrangement under this Act notice of the intention to make the application shall be fixed on the town hall

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one month at least before the application, and a copy of the intended application shall during that month be kept in the town clerk's office, and be open to public inspection.

(2.) If the Treasury either refuse their approval or grant it conditionally or under qualifications, notice of the correspondence between the Treasury and the council shall forthwith and during one month be fixed on the town hall, and a copy of the correspondence shall during that month be kept in the town clerk's office, and be open to public inspection.

Deputy.

Acts of deputy not to be invalidated by defect in appointment.

237. No defect in the appointment of a deputy under this Act shall invalidate his acts.

Overseers.

Notices to and acting of overseers.

238.—(1.) Every matter by the Municipal Corporations Acts directed to be done by overseers may be lawfully done by the major part of them.

(2.) Any notice by the Municipal Corporations Acts required to be given to overseers may be delivered to any one of them, or left at his place of abode, or at his office for transacting parochial business.

Declarations and Oaths.

Power to administer oaths, &c.

239.—(1.) Where by or under this Act a declaration or oath is required to be made or taken by the holder of a corporate office or other person before the council or any members thereof, or any other persons, they shall have authority to receive and administer the same without any commission or authority other than this Act.

(2.) Nothing in this Act in any case shall require or authorize the taking or making of any oath or declaration that would not have been required or authorized under the Promissory Oaths Act, 1868, or otherwise by law, if this Act had not been passed, or interfere with the operation of the Promissory Oaths Act, 1868 (*a*).

31 & 32 Vict. c. 72.

Note. Sect. 239.

(*a*) This sub-section appears to have the effect of reading into the Act the Promissory Oaths Act, 1868. When, therefore, this Act prescribes the making of an oath, and the Promissory Oaths Act substitutes a declaration for such oath, the declaration must be taken.

Forms.

Forms in schedule.

240. The forms in the Eighth Schedule or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

Misnomer or Inaccurate Description.

Misnomer or inaccurate description not to hinder.

241. No misnomer or inaccurate description of any person, body corporate, or place named in any schedule to the Municipal Corporations Act, 1835, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to that person, body corporate, or place, provided the description of that person, body corporate, or place be such as to be commonly understood (*a*).

(*a*) Sect. 32 of the repealed Act of 1835 required that at the election of councillors the voting paper should contain the Christian names and surnames of the persons for whom the burgess votes, with their places of abode and descriptions. Sect. 142 contained similar provisions to those in the above section. A voting paper contained the Christian name and surname of the candidate and his place of abode, and nothing more :—*Held*, that this was not an inaccurate description, but a total omission of the description of the candidate, and was not cured by the 142nd section. (*R.* v. *Tugwell*, L. R. 3 Q. B. 704.)

Under the same sections of the Act of 1835 the candidate was duly nominated as *William Penfold*. There was no other person of that name qualified in the borough. In some of the voting papers the candidate was described as *W. Penfold* :—*Held*, that the initial *W.* instead of *William* was a misnomer, cured by the corresponding section of the repealed Act. (*Reg.* v. *Plenty*, L. R. 4 Q. B. 346.)

In a nomination paper on an election for councillors for a borough under the Municipal Elections Act the name of the candidate, which was *Robert Vicars Mather*, was inserted thus, "*Robert V. Mather.*" *Held*, not such a statement of the surname and other names of the persons nominated as to satisfy the requirements of sect. 1 of the Act and the form given in the Second Schedule, and that the inaccuracy was not cured by sect. 142 of the Act of 1835, which does not apply to nomination papers. (*Mather* v. *Brown*, L. R. 1 C. P. D. 596.)

The case of *Reg.* v. *Coward*, 16 Q. B. (N.S.), 819, was an information in the nature of a *quo warranto* for exercising the office of councillor in the borough of C. In the voting paper the councillor was

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described as residing in Gonville Place, whereas, in fact, he resided in Newmarket Road. EARLE, J., in delivering judgment said: "The vote is to state the place of abode of the candidate. The true place of abode is Newmarket Road. The place is stated to be Gonville Place. Gonville Place was the candidate's abode at a previous time, and was commonly understood in the borough to be his abode still. I think that this does not satify section 142 of the 5 & 6 Will. 4, c. 76, which requires not that the place named should be that which is understood to be the abode, but that the name should be understood to designate the place which really is the abode."

Under the 14th section of the Act of 1837 it was decided that the Christian name of the person for whom a councillor votes as alderman need not be written at full length; if such a contraction be written as is ordinarily used to designate the Christian name. (*R.* v. *Bradley*, 3 E. & E. 634; S. C. 30 L. J. Q. B. 180.)

Describing in a voting paper for the election of an alderman a party as of the place where he daily transacts his business, instead of the place at which he resides, is such a misdescription of the place of his abode as to vitiate the voting paper, although such description was made without fraud or intention to mislead, and was such as would be commonly understood to apply to the person voted for. (*R.* v. *Deighton*, 5 Q. B. 896; 13 L. J. Q. B. 241).

See further *R.* v. *Hammond*, 17 Q. B. 772; 21 L. J. Q. B. 153; in which Lord CAMPBELL, C. J., decided that the voting paper should contain the candidate's place of residence, and that a description of his place of business, even though it be found as a fact that he is as well known by that description as by his place of residence, is not sufficient.

The case of *Reg.* v. *Gregory*, 1 E. & B. 600, was also a case upon a *quo warranto* against the defendant for exercising the office of councillor.

A voting paper was signed "W. J., of K. Street." The qualification of W. J. on the burgess roll was "House in M. Street." It was shown that K. Street and M. Street intersected; that the house in question was the corner house; that it consisted of what had formerly been two distinct houses, one in each street, and had a street-door in each street. It was held that this description was "such as to be commonly understood," within the section.

Joseph C. and five others were entitled to vote at a municipal election, but were by mistake described on the burgess roll by wrong Christian names. They voted as described in the burgess roll and their votes were objected to on the ground of false personation. *Held*, that the right men having voted but in wrong names the case was one of misnomer, and was cured by the 142nd section of the Act of 1835. (*R.* v. *Thwaites*, 1 E. & B. 704; 22 L. J. Q. B. 238. *See* also *R.* v. *Spratley*, 6 E. & B. 363.)

Substitution in former Acts.

Provision for references in unrepealed enactments to 5 & 6 Will. 4, c. 76, &c.

242.—(1.) In the several enactments described in Part I. of the Ninth Schedule, a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

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(2.) In each of the enactments described in Part II. of the Ninth Schedule, there shall be substituted for the respective provision of the Municipal Corporations Act, 1835, in that part mentioned in connection therewith, such provision of this Act as is also mentioned in connection therewith.

(3.) Where any Act passed before this Act, and not specified in the First or in the Ninth Schedule, refers to the Municipal Corporations Act, 1835, or any Act amending it, or to boroughs or corporations subject to that Act or any Act amending it, the reference shall be deemed to be to this Act or to the corresponding provision of this Act, or to boroughs or corporations subject to this Act (as the case may require).

(4.) All enactments to which this section relates shall, except as in this section provided, continue to operate as if this Act had not been passed.

Short titles of Acts partly repealed.

243. Such of the Acts specified in the First Schedule as will remain in force to any extent after the commencement of this Act may continue to be cited by the short titles in that schedule mentioned.

Returning Officers at Parliamentary Elections.

Mayor of certain boroughs to be returning officer in parliamentary elections.

244.—(1.) In boroughs, other than cities and towns being counties of themselves, the mayor shall be the returning officer at parliamentary elections; but this provision shall not extend to the borough of Berwick-upon-Tweed.

(2.) If there are more mayors than one within the boundaries of a parliamentary borough, the mayor of that borough to which the writ of election is directed shall be the returning officer.

(3.) If when a mayor is required to act as returning officer the mayor is absent, or incapable of acting, or there is no mayor, the council shall forthwith choose an alder man to be returning officer.

Disfranchised Parliamentary Boroughs.

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Electors in disfranchised boroughs. 30 & 31 Vict. c. 102.

245. Where a borough has, in pursuance of the representation of the People Act, 1867, or of any Act passed in the session of the thirty-first and thirty-second years of the reign of Her Majesty, ceased to return a member to serve in Parliament, and the persons entitled to vote for the member or members formerly returned by the borough were by law electors for any other purpose, the burgesses of the borough shall be electors for that purpose, and shall in all respects, as regards that purpose, be substituted for the persons so entitled to vote.

Licensing.

Explanation of terms "town corporate," &c. in Licensing Act.

246. In the Act of the ninth year of the reign of King George the Fourth, chapter sixty-one, "to regulate the granting of licenses to keepers of inns, alehouses, and victualling houses in England," the expressions "town corporate," "county or place," and "division or place," include every borough having a separate commission of the peace, and the expression "high constable" includes any constable of any such borough to whom the justices of the borough direct their precept under that Act.

Freedom of Trading.

Right of free trading in boroughs.

247. Notwithstanding any custom or byelaw, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise within any borough.

Cinque Ports.

Special provisions as to certain of the Cinque Ports.

248.—(1.) The boroughs of Hastings, Sandwich, Dover, Hythe, being four of the Cinque Ports, and the borough of Rye, are in this section referred to as the five boroughs.

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(2.) The jurisdiction, powers, and authorities of the court of quarter sessions, recorder, coroner, and clerk of the peace for each of the five boroughs shall extend to the non-corporate members and liberties thereof, and to such corporate members thereof as have not a separate court of quarter sessions.

(3.) The jurisdiction, powers, and authorities of the persons constituted justices within and throughout the liberties of the Cinque Ports by virtue of their commission shall extend to all places being within the limits of the five boroughs or of their members or liberties, corporate or non-coporate, and not being within the limits of a borough having a separate commission of the peace.

(4.) The justices for the five boroughs respectively shall have all the jurisdiction, powers, and authorities of justices for a county relating to the granting of licenses or authorities to persons to keep inns, ale-houses, or victualling houses, or to sell exciseable liquors by retail within any of the corporate or non-corporate members or liberties of the five boroughs respectively, not being within the limits of a borough having a separate commission of the peace.

(5.) The non-corporate members and liberties of the five boroughs and such corporate members thereof as have not a separate court of quarter sessions shall be charged by the respective courts of quarter sessions of the five boroughs, with a due proportion of all those expenses of the five boroughs, to the payment whereof rates in the nature of county rates are applicable; and such rates may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the Municipal Corporations Act, 1835, under any enactment then in force, but subject to the operation of any subsequent enactment affecting the same.

(6.) A due proportion of inhabitant householders to serve as grand jurors and jurors at the respective courts of quarter sessions of the five boroughs shall be summoned by the clerks of the peace thereof from the non-corporate members and liberties thereof, and such corporate members thereof as have not a separate court of

quarter sessions; and the attendance of such jurors shall be enforced, and their defaults punished, in the manner by this Act directed with respect to jurors in boroughs. [Sect. 248.

(7.) Nothing in this section shall affect the Cinque Ports Act, 1869, or the Acts therein recited. 32 & 33 Vict. c. 53.

Cambridge.

249.—(1.) It shall be lawful for the Queen, from time to time, by her commission of the peace for the borough of Cambridge, to constitute the Vice-Chancellor for the time being of the University of Cambridge a justice for that borough. Vice-Chancellor of Cambridge.

(2.) He shall not, by reason of being so constituted, have any greater authority as to the grant of licences to alehouses than any other justice named in the commission.

(3.) But nothing in this section shall affect the rights and privileges which the Vice-Chancellor lawfully has or enjoys, or might have lawfully had or enjoyed if he were not so constituted a justice.

Savings.

250.—(1.) Nothing in this Act shall prejudicially affect any charter granted before the commencement of this Act, or take away, abridge, or prejudicially affect any of the rights, powers, privileges, estates, property, duties, liabilities, or obligations vested in or imposed on any municipal corporation existing at the commencement of this Act, or in or on the mayor, or the council of a borough then existing, or any members or committee of the council, by the incorporation of the inhabitants of the borough, or by transfer from any other authority, or otherwise; but every such charter shall continue to operate, and every such corporation shall continue to have perpetual succession and a common seal, and to be capable in law by the council to do and suffer all acts Saving for existing corporations.

Sect. 250. which at the commencement of this Act they and their successors respectively may lawfully do or suffer, and the corporation and all members and officers thereof and their sureties, and every such mayor, and every such council and committee, and every such officer, shall continue to have, enjoy, and be subject to the like rights, powers, offices, privileges, estates, property, duties, liabilities, and obligations, as if this Act had not been passed, without prejudice nevertheless to the operation of the repeal of enactments by this Act, and to the other express provisions of this Act.

(2.) Nothing in this Act shall alter the boundaries of any borough existing at the commencement of this Act, or the number, apportionment, or qualification of the aldermen or councillors thereof, or the division thereof into wards.

(3.) Nothing in this Act shall affect the right of the council of a borough to collect by their own officers the borough rate and watch rate, or either of them, where, at the commencement of this Act, they are authorized by law to so collect, and are so collecting, the same.

(4.) Nothing in this Act shall alter the respective jurisdiction of county and borough justices.

(5.) Nothing in this Act shall affect the right of any borough named in Schedule (A.) to the Municipal Corporations Act, 1835, to have a separate commission of the peace.

Saving for local Acts.

251. Nothing in this Act shall alter the effect of any local Act of Parliament.

Saving for Prison Acts. 28 & 29 Vict. c. 126. 40 & 41 Vict. c. 21. 13 & 14 Vict. c. 91.

252. Nothing in this Act, except the provision referring to the Ninth Schedule, shall affect the Prison Act, 1865, or the Prison Act, 1877, and nothing in this Act shall affect the Act of the session of the fifth and sixth years of Her Majesty, chapter ninety-eight, "to amend the laws concerning prisons," or revive or restore any enactment which, being contained in that Act, or in the Municipal Corporation (Justices) Act, 1850, or in

any other Act, is virtually repealed or superseded by the Prison Act, 1865, or the Prison Act, 1877. Sect. 252.

253. Nothing in this Act shall compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in Her Majesty's service on full pay or half pay, or by any officer or other person employed and residing in any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments (*a*). Saving for military and naval officers, &c.

(*a*) The 11th sect. of the 7 & 8 Geo. 4, c. 53, provides that no commissioner or officer of excise, or person employed in the collection or management of or accounting for the revenue of excise shall during the time of his acting be compelled to serve any corporate office.

The 18th sect. of the 7 Will. 4 & 1 Vict. c. 22, s. 18, provides that every registrar of births and deaths and every registrar of marriages shall be free and exempt from serving every corporate office.

The 12th sect. of the 7 Will. 4 & 1 Vict. c. 33, provides that no postmaster-general, nor any officer of the Post Office shall be compellable to serve any corporate office.

The 17th sect. of the 16 & 17 Vict. c. 59, provides that no officer or person appointed by the Commissioners of Inland Revenue, or employed by them, or under their authority or direction, shall, so long as they shall continue in such employment, be compelled to serve any corporate office.

The 35th sect. of the 21 & 22 Vict. c. 90, provides that every person registered as a legally qualified medical practitioner under that Act shall be exempt, if he so desire, from serving all corporate offices.

The 17th sect. of the 30 & 31 Vict. c. 110, provides that men enrolled and officers and non-commissioned officers appointed under that Act (the Reserve Forces Act, 1867) shall not be liable to serve any borough office.

The 9th sect. of the 39 & 40 Vict. c. 36, provides that no commissioner, officer, clerk, or other person acting in the management or service of the Customs shall be compellable to serve any corporate office.

The 30th sect. of the 41 & 42 Vict. c. 33, provides that every person registered under that Act (the Dentists Act, 1878) shall be exempt, if he so desires, from serving all corporate offices.

254. Nothing in this Act shall affect the watching, paving, or lighting, or the internal regulations for the government, of any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments, or make the tenements therein Saving for dockyards, barracks, &c.

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or the inhabitants thereof liable to any rate for watching, paving, or lighting.

Saving as to Admiralty.

255. Nothing in this Act shall affect the authority of justices vested in the commissioners for executing the office of lord high admiral of the United Kingdom, or any authority to appoint coroners to act within the jurisdiction of the Admiralty.

Saving for lord warden.

256. Nothing in this Act shall affect the jurisdiction and office of the lord warden in his office of admiral of the Cinque Ports.

Saving for universities.

257. Nothing in this Act shall—

(1.) Affect the rights, privileges, duties, or liabilities of the chancellor, masters, and scholars of the Universities of Oxford and Cambridge respectively, as by law possessed under the respective charters of those universities or otherwise; or

(2.) Entitle the mayors of Oxford and Cambridge respectively to any precedence over the vice-chancellors of those universities respectively; or

(3.) Entitle any person to be enrolled a citizen of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of those universities; or

(4.) Compel any resident member of either of those universities to accept any office in or under the municipal corporation of Oxford or of Cambridge; or

(5.) Authorize the levy of any rate within the precincts of those universities, or of any of the colleges or halls thereof, which now by law cannot be levied therein, or make either of those universities, or the members thereof, liable to any rate to which they are not liable to contribute at the commencement of this Act; or

(6.) Authorize the transfer of any rights or liabilities

by a local authority to the municipal corporation of the borough of Cambridge without the consent of the chancellor, master, and scholars of the University of Cambridge; or

(7.) Affect the rights or privileges granted by charter or Act of Parliament to the University of Durham.

Saving for jurisdiction over cathedral precincts.

258. Nothing in this Act shall prevent any jurisdiction or authority exercised in or over the precinct or close of any cathedral from being continued concurrently with the jurisdiction and authority of the justices of the borough in which the precinct or close is situate.

Saving for royal prerogative.

259. Nothing in this Act shall prejudicially affect Her Majesty's royal prerogative; and the enabling provisions of this Act shall be deemed to be in addition to, and not in derogation of, the powers exercisable by Her Majesty by virtue of her royal prerogative.

Saving as to repealed enactments.

260.—(1.) The repeal effected by this Act shall not affect—

(*a.*) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act; or

(*b.*) Any proceeding or thing pending or in course of being done at the commencement of this Act under any enactment repealed by this Act; or

(*c.*) Any jurisdiction or practice established, confirmed, or transferred, or right or privilege acquired or confirmed, or duty or liability imposed or incurred, or compensation secured, by or under any enactment repealed by this Act; or

(*d.*) Any disability or disqualification existing at the commencement of this Act under any enactment repealed by this Act; or

(*e.*) Any fine, forfeiture, punishment, or other consequence incurred or to be incurred in respect of any offence committed before the commence-

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ment of this Act against any enactment repealed by this Act; or

(*f.*) The institution or the prosecution to its termination of any legal proceeding or other remedy for ascertaining, enforcing, or recovering any such jurisdiction, practice, right, privilege, duty, liability, compensation, disability, disqualification, fine, forfeiture, punishment, or consequence as aforesaid; or

(*g.*) The terms on which any money has been borrowed before the commencement of this Act under any enactment repealed by this Act.

(2.) The repeal effected by this Act shall not extend to Scotland or Ireland, and shall not, as regards the enactments described in Part II. of the First Schedule, operate in respect of any place other than a borough to which this Act applies, and shall not revive or restore any statute, law, usage, custom, royal or other charter, grant, letters patent, bye-law, jurisdiction, office, right, title, claim, privilege, liability, disqualification, exemption, restriction, practice, procedure, or other matter or thing abolished by the Municipal Corporations Act, 1835, or not in force or existing at the commencement of this Act, or otherwise affect the past operation of any enactment repealed by this Act.

(3.) All elections, declarations, appointments, bye-laws, rates, tables of fees, and regulations made, or pending, or in the course of being made, and all other things done, or pending, or in the course of being done, under the Municipal Corporations Act, 1835, or any other enactment repealed by this Act, before or at the commencement of this Act, shall for the purposes of this Act be of the like effect as if they had been made or done, or were pending, or in the course of being made or done under this Act, and shall, as far as may be requisite for the continuance, validity, and effect thereof, be deemed to have been made or done, or may be carried on and be made or done, as the case may require, under this Act.

SCHEDULES.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

PART I.

Enactments repealed generally.

5 & 6 Will. 4, c. 76.	The Municipal Corporations Act, 1835.
6 & 7 Will. 4, c. 77. in part.	An Act for carrying into effect the reports of the Commissioners appointed to consider the state of the Established Church in England and Wales, with reference to ecclesiastical duties and revenues, so far as they relate to episcopal dioceses, revenues, and patronage ; in part, namely,— section twenty-six.
6 & 7 Will. 4, c. 103. in part.	The Municipal Corporation (Boundaries) Act, 1836 ; except section six (Berwick).
6 & 7 Will. 4, c. 104.	The Municipal Corporation (Borough Fund) Act, 1836.
6 & 7 Will. 4, c. 105.	The Municipal Corporation (Justices, &c.) Act, 1836.
7 Will. 4, & 1 Vict. c. 78.	The Municipal Corporation (General) Act, 1837.
7 Will. 4, & 1 Vict. c. 81.	The Municipal Corporation (Watch Rate) Act, 1837.
1 & 2 Vict. c. 31.	The Municipal Corporation (Benefices) Act, 1838.
1 & 2 Vict. c. 35.	An Act to repeal the stamp duty now paid on admission to the freedom of corporations in England.
2 & 3 Vict. c. 27.	The Municipal Corporation (Borough Courts) Act, 1839.
2 & 3 Vict. c. 28.	The Municipal Corporation (Watch Rate) Act, 1839.
3 & 4 Vict. c. 28.	The Municipal Corporation (Watch Rate) Act, 1840.
4 & 5 Vict. c. 48.	An Act to render certain municipal corporations rateable to the relief of the poor in certain cases (*a*).

(*a*) So much of this Act as exempts the property of municipal corporations from being rated to the relief of the poor in the cases therein mentioned, was repealed by 39 & 40 Vict. c. 1, s. 30.

1st Sched.

PART I.

6 & 7 Vict. c. 89.	The Municipal Corporation Act, 1843.
8 & 9 Vict. c. 110.	The Municipal Corporation (Rates) Act, 1845.
11 & 12 Vict. c. 93.	An Act to confirm the incorporation of certain boroughs.
12 & 13 Vict. c. 65.	An Act to provide a more convenient mode of levying and collecting county rates, county police rates, and district police rates, in parishes situated partly within and partly without the limits of boroughs which are not liable to such rates.
12 & 13 Vict. c. 82. in part.	An Act to relieve boroughs in certain cases from contribution to certain descriptions of county expenditure ; in part, namely,— section one.
13 & 14 Vict. c. 42.	The Municipal Corporation (Incorporation) Act, 1850.
13 & 14 Vict. c. 64.	The Municipal Corporation (Bridges) Act, 1850.
13 & 14 Vict. c. 91. in part.	The Municipal Corporation (Justices) Act, 1850 ; in part, namely,— section nine.
13 & 14 Vict. c. 101. in part.	An Act to continue two Acts passed in the twelfth and thirteenth years of the reign of Her Majesty, for charging the maintenance of certain poor persons in unions in England and Wales upon the common fund ; and to make certain amendments in the laws for the relief of the poor ; in part, namely,— section ten.
15 & 16 Vict. c. 81. in part.	An Act to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales ; in part, namely,— section thirty-eight.
16 & 17 Vict. c. 79.	The Municipal Corporation Act, 1853.
16 & 17 Vict. c. 137.	The Charitable Trusts Act, 1853 ; in part, namely,— section sixty-five.
20 & 21 Vict. c. 50.	The Municipal Corporation Act, 1857.
21 & 22 Vict. c. 43.	An Act to amend the municipal franchise in certain cases.
22 Vict. c. 35.	The Municipal Corporation Act, 1859.
22 & 23 Vict. c. 32. in part.	An Act to amend the law concerning the police in counties and boroughs in England and Wales ; in part, namely,— sections five and six.
24 & 25 Vict. c. 75.	The Municipal Corporations Acts Amendment Act, 1861.
31 & 32 Vict. c. 41.	The Borough Electors Act, 1868.
32 & 33 Vict. c. 23.	The Municipal Corporation (Recorders) Act, 1869.

32 & 33 Vict. c. 55.	The Municipal Corporation (Election) Act, 1869.
32 & 33 Vict. c. 62. in part.	The Debtors Act, 1869; in part, namely,— section twenty-one.
34 & 35 Vict. c. 67.	The Municipal Corporations Act, 1859, Amendment Act.
35 & 36 Vict. c. 33. in part.	The Ballot Act, 1872; in part, namely,— sections twenty and twenty-one.
35 & 36 Vict. c. 60.	The Corrupt Practices (Municipal Elections) Act, 1872.
36 & 37 Vict. c. 33.	The Municipal Corporations Evidence Act, 1873.
37 & 38 Vict. s. 59.	The Working Men's Dwellings Act, 1874.
38 & 39 Vict. c. 40.	The Municipal Elections Act, 1875.
39 & 40 Vict. c. 61. in part.	The Divided Parishes and Poor Law Amendment Act, 1876; in part, namely,— section thirty.
40 & 41 Vict. c. 69.	The Municipal Corporations (New Charters) Act, 1877.
41 & 42 Vict. c. 26. in part.	The Parliamentary and Municipal Registration Act, 1878; in part, namely,— sections twenty, thirty-four, and forty-one.

PART II.

Enactments repealed only as to Boroughs within this Act.

3 Edw. 1, c. 6. in part.	The Statutes of Westminster, the first. Amerciaments shall be reasonable; in part, namely,— as far as it relates to a city, borough, or town.
3 Edw. 1, c. 31. in part.	The Statutes of Westminster, the first. Excessive toll in market town. Murage; in part, namely,— from "Touching citizens" to "the King," inclusive.
15 Rich. 2, c. 5. in part.	St. 7 Edw. I. de Religiosis. Converting land to a churchyard declared to be within that statute. Mortmain, where any is seised of lands to the use of spiritual persons. Mortmain to purchase lands to gilds, fraternities, offices, commonalties; or to their use; in part, namely,— as far as it relates to mayors, bailiffs, and commons of cities, boroughs, and other towns which have a perpetual commonalty.

1st Sched. Part II.		
	2 & 3 Phil. & Mary, c. 18.	An Act touching commissions of the peace and gaol delivery in towns corporate not being counties in themselves.
	7 Jas. 1, c. 5. in part.	An Acte for ease in pleading against troublesome and contencious suites presented against justices of the peace, maiors, constables, and certaine other His Majesties officers for the lawful execution of their office; in part, namely,— as far as it relates to mayors of cities or towns corporate.
	21 Jas. 1, c. 12. in part.	An Acte for ease in pleading against troublesome and contencious suites; in part, namely,— section three, as far as it relates to mayors of cities or towns corporate.
	11 Geo. 1, c. 4.	An Act for preventing the inconvenience arising from want of elections of mayors or other chief magistrates of boroughs or corporations being made upon days appointed by charter or usage for that purpose, and directing in what manner such elections shall be afterwards made.
	12 Geo. 3, c. 21.	An Act for giving relief in proceedings upon writs of *mandamus* for the admission of freemen into corporations and for other purposes therein mentioned.
	32 Geo. 3, c. 58.	An Act for the amendment of the law in proceedings upon information in nature of *quo warranto*.
	55 Geo. 3, c. 51.	An Act to amend an Act of His late Majesty King George the Second, for the more easy assessing, collecting, and levying of county rates.
	57 Geo. 3, c. 91.	An Act to enable justices of the peace to settle the fees to be taken by clerks of the peace of the respective counties and other divisions of England and Wales.
	2 & 3 Will. 4, c. 69.	An Act to prevent the application of corporate property to the purposes of election of members to serve in Parliament.
	3 & 4 Will. 4, c. 31.	An Act to enable the election of officers of corporations and other public companies now required to be held on the Lord's Day to be held on the Saturday next preceding or on the Monday next ensuing.
	4 & 5 Will. 4, c. 27.	An Act for the better administration of justice in certain boroughs and franchises.
	7 Will. 4, & 1 Vict. c. 19.	An Act to empower the recorder or other person presiding at quarter sessions in corporate cities and towns, and justices of the peace for counties, ridings, or divisions, to divide their respective courts in certain cases.
	5 & 6 Vict. c. 104.	The Municipal Corporation Act, 1842.
	15 & 16 Vict. c. 5.	The Municipal Corporation Act, 1852.
	23 & 24 Vict. c. 16.	The Municipal Corporation (Mortgages, &c.) Act, 1860.

23 & 24 Vict. c. 51. in part.	The Local Taxation Returns Act, 1860; in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.
23 & 24 Vict. c. 106. in part.	The Lands Clauses Consolidation Acts Amendment Act, 1860; in part, namely,— section six.
38 & 39 Vict. c. 89. in part.	The Public Works Loans Act, 1875; in part, namely,— in section forty, the second paragraph (beginning "The council" and ending "this Act"), and the words "and the council respectively" in the last paragraph.
39 & 40 Vict. c. 20. in part.	The Statute Law Revision Act (Substituted Enactments) Act, 1876; in part, namely,— section three.
40 & 41 Vict. c. 17.	An Act to amend the law relating to the division of courts of quarter sessions in boroughs.
40 & 41 Vict. c. 66. in part.	The Local Taxation Returns Act, 1877; in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.
42 & 43 Vict. c. 30. in part.	The Sale of Food and Drugs Act, Amendment Act, 1879; in part, namely,— section eight.
43 Vict. c. 17.	The Town Councils and Local Boards Act, 1880.

THE SECOND SCHEDULE.

MEETINGS AND PROCEEDINGS OF COUNCIL.

1. The council shall hold four quarterly meetings in every year for the transaction of general business.

Power of adjournment appears to be at common law incident to every meeting of a corporate body, and although the council is not the corporation, yet it represents the corporation, and is the only representative of it, and the only mode or channel through which it can act. Where power is given to the council, the power is given to the corporation, for the council is the executive of the corporation. (*The Mayor, &c., of Manchester* v. *Lyons Brothers*, 47 L. T. (N.S.) 676.) Hence it seems a just conclusion that the meetings of the council are the corporate meetings, and therefore that the power of adjournment is incident. (Vide *Reg.* v. *Grimshaw*, 10 Q. B. 747, and Grant on Corporations, 358.)

2. The quarterly meetings shall be held at noon on each ninth of November, and at such hour on such other three days before

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the first of November then next following as the council at the quarterly meeting in November decide or afterwards from time to time by standing order determine.

3. The mayor may at any time call a meeting of the council.

4. If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members of the council, has been presented to him, any five members of the council may forthwith on that refusal call a meeting. If the mayor (without so refusing) does not within seven days after such presentation call a meeting, any five members of the council may, on the expiration of those seven days, call a meeting.

This provision, in the event of the mayor neglecting to call a meeting, is new, and supplies a *casus omissus* under the repealed Acts.

5. Three clear days at least before any meeting of the council, notice of the time and place of the intended meeting, signed by the mayor, or if the meeting is called by members of the council, by those members, shall be fixed on the town hall. Where the meeting is called by members of the council, the notice shall specify the business proposed to be transacted thereat.

"Three clear days at least," means exclusive of the day of notice and of the day of meeting. (*See* sect. 230, and note thereon.)

6. Three clear days at least before any meeting of the council, a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left or delivered by post in a registered letter at the usual place of abode of every member of the council three clear days at least before the meeting.

"Service by post" is new. The Public Health Act, 1875, contains similar provisions as to service of notices under that Act.

7. Want of service of the summons on any member of the council shall not affect the validity of a meeting.

"Want of service," &c. This provision deals with the case of an irregularity in the service of a summons or miscarriage thereof; but it would not render the proceedings of a council valid where there had been an entire neglect of the requirements of the preceding rule.

8. No business shall be transacted at a meeting other than that specified in the summons relating thereto, except in case of a quarterly meeting, business prescribed by this Act to be transacted thereat.

Under the repealed statute any business could be brought forward at a quarterly meeting without notice. This arrangement opened the door to so much abuse, that it was customary to fence it round by standing orders. Now, however, no business except that prescribed in this Act can be transacted at a quarterly meeting, unless notice has been given in the summons.

9. At every meeting of the council, the mayor, if present, shall be chairman. If the mayor is absent, then the deputy mayor, if chosen for that purpose by the members of the council then present, shall be chairman. If both the mayor and the deputy mayor are absent, or the deputy mayor, being present, is not chosen, then such alderman, or in the absence of all the aldermen, such councillor, as the members of the council then present choose, shall be chairman.

Formerly the deputy mayor, unless he was an alderman, could not take the chair whilst an alderman was present.

10. All acts of the council, and all questions coming or arising before the council, may be done and decided by the majority of such members of the council as are present and vote at a meeting held in pursuance of this Act, the whole number present at the meeting, whether voting or not, not being less than one-third of the number of the whole council.

Under the repealed Acts all questions were determined by the majority of those present. This was found so inconvenient, that in many large boroughs clauses were obtained in local Acts making the decision of the majority of the members of the council present and voting sufficient. The words "whether voting or not," with respect to a quorum, will prevent any doubt as to the necessity of a third of the number of the whole council voting for any motion. Members present and not voting are present for the purpose of making a quorum. Where the mayor, under a mistaken belief that the day was not a proper one for the election of aldermen, declined to proceed with the election; but the minority delivered voting papers for certain candidates named therein; this was *held* to be no election at all, and a *mandamus* issued to proceed to an election. (*R.* v. *Mayor, &c., of Bradford*, 2 L. M. & P. 35; S. C. 20, L. J. Q. B. 226.)

11. In case of equality of votes, the chairman of the meeting shall have a second or casting vote.

12. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose, and shall be signed in manner authorized by this Act.

See sect. 22, sub-sects. 5 and 6.

13. Subject to the foregoing provisions of this Schedule, the council may from time to time make standing orders for the

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regulation of their proceedings and business, and vary or revoke the same.

Such standing orders may be made by the council at any meeting duly convened and holden under these rules. Such standing orders should not provide that they shall not be suspended except with the consent of a two-thirds, or any other majority greater than that prescribed by these rules. Such an attempt to fetter the action of future councils would be useless, as the majority are for all purposes the council. Perhaps standing orders could not be suspended without notice, as no business can be transacted at a meeting other than that specified in the summons. (Rule 8, *supra.*)

THE THIRD SCHEDULE.

Elections.

PART I.

Preparation and Revision of Parish Burgess Lists in Boroughs not Parliamentary.

1. On or before each first of September, the overseers of each parish shall make, sign, and deliver to the town clerk a list, called the parish burgess list, of all persons entitled to be enrolled in the burgess roll for the year in respect of property in that parish.

A printed list, corrected by an overseer in his own handwriting, in which his own name was inserted as a burgess, is not a sufficient signing. (*R.* v. *Burrell*, 12 A. & E. 460; 4 P. & D. 207.)

The penalty for neglect is fixed by sect. 75. (See *Hunt* v. *Hibbs*, 5 H. & N. 123; 29 L. J. Ex. 222; and *R.* v. *Share*, 9 Q. B. 31; 2 G. & D. 453.)

2. The overseers shall keep a printed copy of the parish burgess list made by them open to public inspection on the first fifteen days of September.

3. The town clerk shall cause a printed copy of all the parish burgess lists to be fixed on the town hall, and to be kept so fixed during the last seven of those fifteen days.

The town clerk should see that there is a perfect list exposed every morning. (*R.* v. *Rochester*, 7 E. & B. 910, 923.)

It would seem that an omission or neglect on the part of the overseers or town clerk, in making out or publishing the lists in proper

time, will not affect their validity, as the provisions are merely directory. (*R.* v. *Norwich* (*Mayor*), 1 B. & Ad. 310; *Limerick*, 1 P. & K. 366, 460; *New Sarum*, Id. 242.)

4. Every person whose name is not in a parish burgess list, and who claims to have it inserted therein (in this Act referred to as a claimant), shall, on or before the fifteenth of September, give notice in writing of his claim to the town clerk.

See *R.* v. *Mayor of Kidderminster*, 2 L. M. & P. 201; 20 L. J. Q. B. 281; *R.* v. *Plenty*, L. R. 4 Q. B. 346; 20 L. T. (N.S.) 520; and *R.* v. *Mayor, &c., of Hartlepool*, 2 L. M. & P. 666; 21 L. J. Q. B. 71, referred to in note to Form D. in the Eighth Schedule.

5. Every person whose name is in a parish burgess list may object to any other person as not being entitled to have his name retained in that or any other parish burgess list.

6. Every person so objecting (in this Act referred to as an objector) shall, on or before the fifteenth of September, give to the town clerk, and also give to the person objected to, or leave at or on the property for which he appears in the parish burgess list to be rated, notice in writing of the objection.

See *R.* v. *Harwich* (*Mayor of*), 1 E. & B. 617, and other cases referred to in the note to Form E. in the Eighth Schedule.

7. The town clerk shall make two separate lists of the claimants and the persons objected to (in this Act referred to as respondents), and shall cause printed copies thereof to be fixed on the town hall, and to be kept so fixed during the last seven days of September.

8. He shall also keep a printed copy of each of these lists, open to public inspection on any day during the same seven days.

9. The mayor and the two revising assessors shall in each year revise the parish burgess lists.

Where the mayor and assessors have omitted to hold the court, the Queen's Bench Division will grant a *mandamus* to a succeeding mayor to hold such court after the time mentioned in the statute. (*R.* v. *Mayor of Rochester*, 7 E. & B. 910; S. C. in error, E. B. & E. 1024; *Lewis* v. *Mayor of Rochester*, 9 C. B. (N.S.) 401.)

Where the mayor and assessors erroneously refused to inquire into the qualifications of a large number of persons objected to, a *mandamus* was granted commanding them to hold a court, although the time under the statute had elapsed. The court would not probably grant a *mandamus* if the case affected a few votes only, and which would not, in all probability, turn the scale at a future election or

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seriously affect the state of the municipal constituency. (*R.* v. *Mayor of Monmouth*; *R.* v. *Mayor of Bolton*, L. R. 5 Q. B. 251.)

Where the mayor and assessors erroneously treated the burgess list *de facto* made out for one of the parishes as a nullity, and made out a fresh burgess list for that parish, and inserted in it the name of a person who was on the original parish list, and proved his title to their satisfaction, and such name was inserted in the burgess roll, it was *held* that such person, although duly qualified, acquired no title, as it is with the lists sent in by the overseers, and with them alone, that the mayor has to deal. A *quo warranto* would issue to remove him from the burgess roll. (*Seale* v. *Reg.* 8 E. & B. 22.)

Where the overseers have neglected to make out any list the mayor will be compelled by *mandamus* to insert the name of any qualified claimant on the burgess roll at once; and the court seemed inclined to the opinion that in such a case the mayor may make out a list for the purpose of inserting the names of such claimants. (*R.* v. *Mayor, &c., of Lichfield*, 1 Q. B. 453; S. C. 1 G. & D. 28.)

Where the mayor and assessors, considering a burgess list to be defective and void, have refused to revise it, they are not bound to revise the lists of claimants to be inserted in such burgess list. (*Harwich, In re, Mayor of*, 21 L. J. Q. B. 193.)

10. They shall for this purpose hold an open court in the borough on some or one of the first fifteen days of October.

11. They shall give three clear days notice of the holding of the court, by notice fixed on the town hall.

See sect. 230, and notes thereon, as to the meaning of three clear days.

12. The town clerk shall at the opening of the court produce the parish burgess lists, and a copy of the lists of claimants and respondents.

13. The court shall insert in the parish burgess lists the name of every person who has duly claimed to have his name inserted therein, and is proved to the satisfaction of the court to be so entitled.

14. The court shall expunge from the parish burgess lists the name of every person proved to the court to be dead.

15. Subject as aforesaid, the court shall retain in the parish burgess lists the name of every person to whom objection has not been duly made.

16. The court shall also retain therein the name of every respondent, unless the objector appears by himself, or by some person on his behalf, in support of the objection.

17. Where the objector so appears the court shall require proof of the respondent's qualification, and, if it is not proved to the satisfaction of the court, shall expunge his name from the parish burgess list.

The decision of the court is not final. Application may be made by any person whose name has been expunged, or whose claim has been rejected, to the Queen's Bench Division for a *mandamus* to the mayor to insert his name in the burgess roll. (*See* sect. 47.)

18. If the name of any person is entered in respect of property situate in more than one ward, the court may call upon him to choose, and if he does not choose, may determine in which of those wards he shall be entitled to vote.

19. The court shall correct any mistake and supply any omission proved to the court to have been made in any of the lists with respect to the name or abode of any person, or the description of any property.

"Or the description of any property." These words are new, and appear to confer power upon the court to amend the description in the second or third column of the list of claimants. (Forms F. and G. in the Eighth Schedule.)

20. The overseers, vestry clerks, and collectors of poor rates of every parish shall attend the court.

21. The court may require any overseer or person having the custody of any book containing any poor rate made in any year in any parish to produce the same at the court for inspection.

22. The court may examine on oath the town clerk, overseers, vestry clerks, and collectors, and any claimant, objector, respondent, or witness.

23. The court shall, on the hearing in open court, determine on the validity of all claims and objections.

24. The mayor shall, in open court, write his initials against each name inserted or expunged, and against any part of the lists in which a mistake has been corrected or omission supplied, and shall sign his name to every page of the lists so revised.

25. The mayor may adjourn the court from time to time, so that no adjourned court be held after the fifteenth of October.

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Part II.

PART II.

Rules as to Nomination in Elections of Councillors.

1. Every candidate for the office of councillor must be nominated in writing.

2. The writing must be subscribed by two burgesses of the borough, or, in the case of a ward election, of the ward, as proposer and seconder, and by eight other burgesses of the borough or ward, as assenting to the nomination.

A burgess may sign with the initials of his Christian name. (*R.* v. *Avery*, 18 Q. B. 576.)

Upon the corresponding provisions of the repealed Act the following case arose upon an election petition:

The petitioner, a duly qualified burgess, was nominated for the office of councillor, and on the nomination paper being handed in at the town clerk's office, it was discovered that A., the petitioner's proposer, was not on the burgess roll as entitled to vote, and G., an enrolled burgess, happening to come in at the time, and seeing the nomination paper with the name of a person not entitled to vote as proposer, struck out the name of A. and inserted his own, and the nomination paper was then duly published.

The respondent objected to the nomination paper before the mayor on the ground that it was bad because the signatures of the seconder and eight assentors were placed thereto, while the name of A. appeared therein as proposer. The mayor decided that the nomination was bad. *Held*, upon a special case, that the decision of the mayor was right; the nomination must precede the assent, the assent must not precede the nomination. (*Harmon* v. *Park*, L. R. 7 Q. B. D. 369.)

See *Budge* v. *Andrews and Others*, L. R. 3 C. P. D. 510; *Howes* v. *Turner*, L. R. 1 C. P. D. 670; and *Monks* v. *Jackson*, L. R. 1 C. P. D. 683. referred to in note to Rule 14.

3. Each candidate must be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more.

This rule and the 10th rule are contradictory. The 10th rule was not in the bill as originally drawn. It is difficult to say what is the effect of these provisions. If the Act alone is looked at and the meaning of the legislature thus sought for, then the rule is that where two passages are so repugnant as to be mutually destructive, the earlier passage gives way to the latter, which is taken, as in a will, to speak the latest intention (*see* Maxwell on the Interpretation of Statutes, p. 46.) From this point of view, therefore, Rule 10 would

have full effect. On the other hand, the Act is, on the face of it, a consolidation of the existing Acts, and by such Acts the same burgesses could subscribe as many nomination papers as there were vacancies. From this point of view, Rule 3 correctly represents the law before consolidation.

Of these two views of the difficulty, it is probable that the latter is the correct one.

The difficulty can be avoided, in practice, by taking care that a second nomination paper is not subscribed by a burgess who has signed a previous one.

Where a town clerk is called upon to advise a mayor he should not hesitate to allow nomination papers which comply with Rule 3, leaving those who rely on Rule 10 to take up the point by petition, when, if the court found that there had been a substantial compliance with the principles laid down in the body of this Act, the election could not be invalidated. (Sect. 72.)

4. Each person nominated must be enrolled in the burgess roll or entered in the separate non-resident list required by this Act to be made.

Enrolment without a good title is not sufficient. (*See* sect. 9 (2).)

5. The nomination paper must state the surname and other names of the candidate, with his abode and description.

In a nomination paper the name of the candidate, which was Robert Vickers Mather, was inserted thus, "Robert V. Mather." *Held*, not such a statement of the surname and other names of the person nominated as to satisfy the requirements of sect. 1 of the Municipal Elections Act, 1875, and of the form given in the schedule to that Act; and that the inaccuracy was not cured by sect. 142 of 6 & 7 Will. 4, c. 76. (*Mather* v. *Brown*, L. R. 1 C. P. D. 596.) (*See* note to Form I., Eighth Schedule.)

Sect. 142 of the Act of 1835 is reproduced by sect. 241 ; but nomination papers are not referred to in it. It would seem, therefore, that the nomination paper must contain the surname and other names in full of the candidate. The nomination paper is intended to give to the voters absolute and complete information as to the persons who are candidates. A strict compliance with the above rule is not only necessary, but important to the community.

6. The town clerk shall provide nomination papers, and shall supply any burgess with as many nomination papers as may be required, and shall, at the request of any burgess, fill up a nomination paper.

7. Every nomination paper subscribed as aforesaid must be delivered by the candidate, or his proposer or seconder, at the town clerk's office, seven days at least before the day of election, and before five o'clock in the afternoon of the last day for delivery of nomination papers.

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Delivery by agent is insufficient. (See *Monks* v. *Jackson*, L. R. 1 C. P. D. 683; 35 L. J. (N.S.) 95.) The difference between the above rule and sect. 2, sub-sect. 3, of the Act of 1875 is the omission of "himself" after "candidate." This omission does not appear to warrant the opinion expressed by an able editor, that delivery by an agent would now be sufficient.

8. The town clerk shall forthwith send notice of every such nomination to each candidate.

9. The mayor shall attend at the town hall on the day next after the last day for delivery of nomination papers for a sufficient time, between the hours of two and four in the afternoon, and shall decide on the validity of every objection made in writing to a nomination paper.

"For a sufficient time." These words are new, and are added to meet the inconvenience arising from the mayor having to sit two hours, when the objections could be disposed of in a few minutes.

10. Where a person subscribes more nomination papers than one, his subscription shall be inoperative in all but the one which is first delivered.

See note on Rule 3 of this Part.

The Queen's Bench Division had already decided that where there were four vacancies to be filled, and the burgesses subscribed four nomination papers, which were delivered in due time, and subsequently subscribed a fifth nomination paper which was delivered in due time, that the first four nomination papers were valid and the fifth was invalid. (*Burgoyne and Others* v. *Collins and Others*, L. R. 8 Q. B. D. 450.)

11. Each candidate may, by writing signed by him, or, if he is absent from the United Kingdom, then his proposer or seconder may, by writing signed by him, appoint a person (in this schedule referred to as the candidate's representative) to attend the proceedings before the mayor on behalf of the candidate, and this appointment must be delivered to the town clerk before five o'clock in the afternoon of the last day for delivery of nomination papers.

12. Each candidate, and his representative, but no other person, except for the purpose of assisting the mayor, shall be entitled to attend the proceedings before the mayor.

13. Each candidate and his representative may, during the time appointed for the attendance of the mayor for the purposes of this schedule, object to the nomination paper of any other candidate for the borough or ward.

14. The decision of the mayor shall be given in writing, and

shall, if disallowing an objection, be final, but, if allowing an objection, shall be subject to reversal on petition questioning the election or return. 3rd Sched. PART II.

Where the mayor has improperly allowed an objection to a nomination paper the court had jurisdiction under 12th sect. of 35 & 36 Vict. c. 60, reproduced by sect. 87, to entertain a case questioning the validity of the election. (*Budge* v. *Andrews*, L. R. 3 C. P. D. 510.) An objection to a nomination paper on the ground of delivery by an agent is one which is cognizable by the mayor, but his decision allowing it may be questioned on a petition against the return of the successful candidate. (*Monks* v. *Jackson*, L. R. 1 C. P. D. 683.)

The mayor has no power to deal with an objection as to the time of delivering the nomination papers, so that his decision cannot be questioned on petition. (*Howes* v. *Turner*, L. R. 1 C. P. D. 670.)

The mayor having allowed an objection to a nomination paper, his decision was questioned by election petition, to which he was made a respondent. STEPHENS, J., at chambers struck out his name as a respondent. DENMAN and LINDLEY, JJ., reversed the order at chambers. The Court of Appeal overruled the decision of the divisional court. Lord SELBOURNE, L.C., said, "To my mind it is quite clear that a complaint of an erroneous decision, *bonâ fide* pronounced, is not a complaint of misconduct. . . . . It would be mischievous to make the mayor a respondent where it is only his decision that is complained of."

BAGGALLAY, L.J., said, "It is only an error in judgment or opinion which the mayor is alleged to have made."

BRETT, L.J., said, "What is complained of here is solely an error of judgment upon a point on which the mayor was bound to hear and determine. I am, therefore, of opinion that there was no misconduct alleged, and for this reason the mayor was not properly made a respondent." (*Harmon* v. *Park and Another*, 44 L. T. (N.S.) 81.)

15. The town clerk shall at least four days before the day of election cause the surnames and other names of all persons validly nominated, with their respective abodes and descriptions, and the names of the persons subscribing their nomination papers as proposers and seconders, to be printed and fixed on the town hall, and in the case of a ward election, in some conspicuous place in the ward.

16. The nomination of a person absent from the United Kingdom shall be void, unless his written consent given within one month before the day of his nomination in the presence of two witnesses is produced at the time of his nomination.

17. Where the number of valid nominations exceeds that of the vacancies, any candidate may withdraw from his candidature by notice signed by him, and delivered at the town clerk's office not later than two o'clock in the afternoon of the day next after the last day for delivery of nomination papers: Provided that such

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notices shall take effect in the order in which they are delivered, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies.

18. In and for the purposes of the provisions of this Act relating to proceedings preliminary to election, the burgess roll or ward roll which will be in force on the day of election shall be deemed to be the burgess roll or ward roll, and a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up, shall be deemed to be enrolled in that roll although that roll is not yet completed.

PART III.

Modifications of the Ballot Act in its Application to Municipal Elections.

1. The provisions of the Ballot Act, 1872, with respect to the voting of a returning officer, the use of a room for taking a poll, and the right to vote of persons whose names are on the register of voters, and Rules 16 and 19 in the schedule to that Act, shall not apply in the case of a municipal election.

2. The mayor shall at least four days before the day of election give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat, and at the several polling stations.

3. The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll and counting the votes.

4. The mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and furnish each presiding officer with such number of ballot papers, as in the judgment of the mayor may be necessary for effectually taking the poll at the election.

5. All expenses of the election shall be defrayed in manner by this Act provided.

6. No return shall be made to the Clerk of the Crown in Chancery.

PART IV.

Enactments which are to revive on the Expiration of the Ballot Act.

With respect to a contested election of councillors, elective auditors, or revising assessors, the following rules shall be observed:

1. The returning officer shall cause the requisite polling booths to be erected, or the requisite rooms to be hired and used as polling booths.

2. The returning officer shall, at least two days before the day of election, give public notice of the situation, division, and allotment of the different booths.

3. Each booth shall be divided into compartments, and the returning officer shall appoint a clerk to take the poll at each compartment.

4. There shall be affixed on each booth a notice specifying the part of the borough for which it is allotted.

5. No person shall be admitted to vote at any booth except that allotted for the part in which his qualifying property is situate, unless no booth is allotted for that part, in which case he may vote at any booth.

6. If there is more than one booth, the returning officer may appoint a deputy to preside at each booth.

7. A burgess may vote by delivering to the returning officer or his deputy a voting paper containing the surnames and other names of the persons for whom he votes, with their abodes and descriptions. The voting papers must be signed by the burgess, and must state the qualifying property in respect of which he votes.

8. The returning officer or his deputy shall, if so required by two burgesses, put to any person offering to vote at the time of his delivering in his voting paper, but not afterwards, the following question:

"Are you the person whose name is signed as [*A.B.*] to the voting paper now delivered in by you?"

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The vote of a person required to answer this question shall not be received until he has answered it. If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

9. The returning officer shall, at the close of the poll, examine the voting papers, and shall publish a list of the persons elected not later than two o'clock in the afternoon of the day next but one after the day of election.

10. The town clerk shall, for a period of six months from the day of election, keep at his office the voting papers used at the election, and shall permit any burgess to inspect the same on payment of one shilling for each search.

THE FOURTH SCHEDULE.

FEES AND REMUNERATION.

The following fees and remuneration shall be payable:—

1. *Commissioner for Division into Wards or Alteration of Wards.*

Five guineas for every day he is employed, over and above his travelling and other expenses.

2. *Assistant Recorder and Officers of Second Court of Quarter Sessions.*

For every day not exceeding two, or, by resolution of the council, with the sanction of the Secretary of State, not exceeding six—

To an assistant recorder - -	Ten guineas.
To an assistant clerk of the peace - -	Two guineas.
To an additional crier - - - -	Half a Guinea.

The remuneration is payable on a certificate from the recorder showing the amount due.

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3. *Coroner.*

To the borough coroner (subject to the provisions of any other Act relating to coroners)—	
For every inquisition which he duly takes in the borough - - - - -	Twenty shillings.
and	
For every mile exceeding two miles which he is compelled to travel from his usual place of abode to take such inquisition -	Ninepence.

The 7 Will. 4 & 1 Vict. c. 68, contains provisions enabling the council at a quarterly meeting to make a schedule of the several fees, allowances, and disbursements to be paid on the holding of an inquest, with power from time to time to vary and alter such schedule. Until such schedule is made, the coroner is to pay, in his discretion, all reasonable expenses, and the same shall be repaid out of the borough fund.

By the same Act it is provided that coroners shall lay their accounts before the council, and the council, if satisfied of the correctness, must pay such disbursements out of the borough fund, together with six shillings and eightpence for every inquest, over and above all other fees and allowances to which the coroner was then by law entitled.

At that time the coroner was entitled to a fee of twenty shillings for every inquisition, and mileage (*see* 5 & 6 Will. 4, c. 76, s. 62).

It seems, therefore, that the coroner is still entitled, in addition to the fee mentioned in the above schedule, to the fee of six shillings and eightpence under the 7 Will. 4 & 1 Vict. c. 68.

4. *Special Constables.*

To a special constable, for every day during which is called out to act as such - - - - - - -	Three shillings and sixpence.

THE FIFTH SCHEDULE.

PAYMENTS OUT OF THE BOROUGH FUND.

PART I.

Payments which may be made without Order.

1. Remuneration (if any) of the mayor, of the recorder (if any) in his capacity either of recorder or of judge of a borough civil court, of the stipendiary magistrate (if any), of the town

5th Sched. PART I. clerk, of the treasurer, of the clerk of the peace when paid by salary, of every other officer appointed by the council, and of the clerk to the justices.

2. The remuneration and allowances certified by the Treasury to be payable to the Treasury in respect of an election petition.

3. The remuneration certified by the recorder to be due to any assistant recorder, assistant clerk of the peace, or additional crier.

PART II.

Payments which may not be made without Order.

13 & 14 Vict. c. 42, s. 3. 1. The expenses incurred by overseers, and by the town clerk and other municipal authorities, in relation to the enrolment of burgesses and the holding of municipal elections, or so much of those expenses as is not otherwise provided for under 41 & 42 Vict. c. 26. section thirty of the Parliamentary and Municipal Registration Act, 1878.

2. The expenses incurred by the town clerk in providing accommodation for an election court held under this Act.

3. The expenses of providing, furnishing, maintaining, or improving the corporate buildings, including the justices' room (if any), and the necessary expenses of that room.

4. The fees payable to the clerk of the peace if not paid by salary, and under this Act to the borough coroner.

5. The payments to be made under this Act to or in respect of the borough police and to any special constable, including the following payments (namely):

(*a.*) Such salaries, wages, and allowances to the borough constables, and at such periods, as the watch committee, with the approbation of the council, direct; and

(*b.*) Such further sum as may be awarded by the watch committee, subject to the approbation of the council,

or by the court of quarter or petty sessions, to a borough constable as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of his duty, or as may be awarded by the watch committee, subject to the approbation of the council, to a borough constable, as an allowance to him when disabled by bodily injury, or worn out by length of service; and

(*c.*) Any extraordinary expenses which a borough constable appears to have necessarily incurred in apprehending offenders, and executing the orders of any justice having jurisdiction in the borough, such expenses having been first examined and approved by that justice; and

(*d.*) All other charges and expenses which the watch committee, subject to the approbation of the council, direct to be paid for the purposes of the borough constabulary force.

In the case of *Reg.* v. *Mayor, &c., of Exeter*, 44 L. T. (N.S.) 101, a rule *nisi* had been obtained for a writ of *certiorari* to bring up for the purpose of quashing it, an order of the town council to pay certain costs out of the borough fund or rate under the Act of 1835.

Mr. Justice FIELD said: "The short question is whether it is competent for the town council to direct these expenses to be paid out of the borough fund. The circumstances under which the expenses were incurred were, that the chief constable was directed by the justices to prosecute a person for conspiracy; but the justices had no power to order the chief constable to prosecute so as to bind him. The necessary elements of an action for malicious prosecution are absence of reasonable and probable cause, and malice. The jury have found malice, and have given substantial damages. Apparently the constable was thought to have acted with undue zeal, or personal feeling, and he must be taken to have committed a personal wrong. It is no part of the duty of the chief constable to lay informations, certainly not to do so without reasonable and probable cause, and maliciously. Can the expenses, under these circumstances, be brought within the words of section 82? The case is clearly not within the words 'extraordinary expenses which such persons shall appear to have necessarily incurred in apprehending offenders and executing the orders of any justice of the peace having jurisdiction within the borough.' These words obviously apply, not to directions such as those in the present case, which the justices voluntarily give, but to orders which they have jurisdiction to make, and which are legally binding. Then, are they 'charges and expenses which the watch committee shall, subject to the approbation of the council, direct to be paid for the purposes of the constabulary forces under this Act?' I think not. The purposes of the constabulary force are defined by

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sect. 76 of the Act, and these expenses cannot be held to be for the purposes of the constabulary force. I am of opinion, therefore, that the rule must be made absolute."

A member of the constabulary force of the borough of Liverpool was made the subject of a libellous article in a newspaper, in reference to his conduct as inspector of public-houses, in giving a good character to an applicant for a license, at the meeting of the magistrates of the borough in licensing session, whom he knew to have been the keeper of a house of ill-fame. Upon an intimation from, though without the official sanction of, his superior authorities, he took criminal proceedings, by way of summons before a magistrate, against the publisher of the libel, and incurred expenses thereon. The watch committee, with the subsequent approbation of the town council, made an order on the borough treasurer for the payment of a sum of money on account of such expenses. The Liverpool borough fund has a surplus. *Held*, that such order was not in respect of an allowance, nor a charge or an expense for the purposes of the constabulary force within 5 & 6 Will. 4, c. 76, s. 82, nor an application of the fund for the public benefit of the inhabitants of the borough within sect. 92, and that a rule must go for a *certiorari* to bring up the order for the purpose of being quashed. (*Reg.* v. *Liverpool* (*Mayor and Town Council*), 41 L. J. Q. B. 175 ; 28 L. T. (N.S.) 500.)

It appears, however, that the council could now make an order for the payment of such expenses under sect. 226, if the action, prosecution, or proceeding were for any act done in pursuance or execution or intended execution of the Act, or in respect of any alleged neglect or default in the execution of the Act.

These words are very extensive, but they should not be interpreted to cover the case of a person acting in bad faith or with culpable negligence.

6. The costs and expenses payable by the corporation in respect of the prosecution, maintenance, conveyance, transport, or punishment of offenders.

7. All sums payable under this Act by the corporation of the borough to the treasurer of a county.

8. The expenses of and incidental to the division of a borough into wards or the alteration of wards, including the remuneration of the commissioner appointed for the purposes of the division or alteration.

9. Such remuneration to the clerk to any commissioners for taxes in respect of making copies of assessments as the council think reasonable.

10. The expenses of and relating to a charter of incorporation for a borough, and of and relating to all elections, acts, and proceedings under the charter.

11. All expenses charged on the borough fund by any Act of Parliament or otherwise by law.

12. All other expenses, not by this Act otherwise provided for, necessarily incurred in carrying this Act into effect. 5th Sched. PART II.

These rules are to a large extent a reproduction of the 92nd section of the Act of 1835. The following decisions upon that section may be consulted. Although one or two of them take, unfortunately, much too narrow a view of the powers of expenditure possessed by councils, the rest recognize the necessities and obligations cast upon the body which is entrusted with the duties of local self-government. From these it may be gathered that councils may now rely upon the courts giving full effect to the provisions made by the above rules, and thus remove many of the difficulties which stand in the way of a successful administration of the Act. It is impossible for the legislature to foresee all the exigencies that may arise under the increasing complications of our social system. Nevertheless it has done what it could when it declares that all expenses necessarily incurred under an Act which was passed with the intention to secure good and quiet government for our towns, may be lawfully incurred.

Councils would have no occasion to complain if the law were interpreted in this spirit.

In the case of *Attorney-General* v. *Mayor, &c., of Norwich*, 2 Myl & Cr. 406, 425, 428, affirming the judgment in 1 Keen, 700, the LORD CHANCELLOR observed: "This clause, after providing that the council shall be at liberty to pay all other expenses not otherwise provided for, which shall be necessarily incurred in carrying into effect the provisions of this Act—which cannot merely mean expenses to carry into effect that which must be done to set the Act of Parliament in operation, but must mean also those expenses which would arise out of the duties imposed on the parties by the Act—goes on to say, that a surplus shall be applied under the direction of the council for the public benefit of the inhabitants and the improvement of the borough; a very large discretion, and, like every other discretion given for public purposes, to be honestly and faithfully exercised."

Where a bill had been presented to Parliament containing powers for the construction of waterworks, and for the doing of acts which, if done, would interfere with the stream of a river passing through a particular borough town, so as to prevent the efficient action of the stream in removing the sewage of the town, and thus indirectly affect the value of the rateable houses in the borough, the tolls of the market, and the other property forming the borough fund, and the corporation had applied part of the surplus of the borough fund in a partially successful opposition to the passing of the bill, it was decided by one of the Vice-Chancellors, that under the Act of 1835, the corporation, whether they had any surplus borough fund or not, were justified in applying their funds in opposing such a bill, and, upon appeal, it was *held* that the payment of such expenses out of such a fund was not so clearly contrary to the spirit of the 90th and 92nd sections of that Act, which provides for the application of the surplus of the borough fund, as to warrant the court in granting an interlocutory injunction to restrain such application. (*Attorney-General* v. *Mayor, &c., of Wigan*, 23 L. J., Equity, 429.)

A corporation is justified, if acting *bonâ fide*, in applying its funds in opposing Parliamentary bills which would affect its existence, and materially injure its powers as a corporation, though no such power

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is expressly given to it by its incorporating Act. (*Bower* v. *Sligo (Commissioners)*, 4 Ir. R. C. L. 489.)

Municipal corporations having been reduced by the Municipal Corporations Act, 1835, from the position of owners of property to that of trustees, possess the ordinary right of trustees to defend their trust property and their rights as trustees from attack at the expense of the trust estate.

Consequently, a municipal corporation has the right, either under these rules, or under the general law applicable to trustees, to defray out of the borough funds or rates the expenses of any attack made by bill in Parliament, whether against their existence as a corporation, or against their property, or only against their rights, powers, or privileges, and that right is not taken away by the Municipal Corporations (Borough Funds) Act, 1872. (*Attorney-General* v. *Brecon*, L. R. 10 Ch. D. 204; 40 L. T. (N.S.) 52.)

In this case the following cases were considered:—

Bright v. *North* (2 Ph. 216); *Attorney-General* v. *Corporation of Wigan*, Kay, 268, 5 D. M. & G. 52; and *Reg.* v. *Mayor of Sheffield*, L. R. 6 Q. B. 652; as to the cases last cited, *see* observations thereon in the Preface.

Repairs of a pew in a parish church which the corporation have occupied as such may lawfully be charged on the borough fund. (*Reg.* v. *Mayor, &c., of Warwick*, 8 Q. B. 926; 15 L. J. Q. B. 306.)

During the progress of a Tramways Act through Parliament, a town council authorized their town clerk to make terms for the purchase of tramways with the company promoting the bill. Amongst other terms of arrangement he agreed that the corporation should pay the expenses of the bill if they resolved to take the tramways according to their powers in the bill. The council consented to these terms, and after the Act was passed, resolved to take the tramways; they afterwards resolved to pay the expenses agreed to. The surplus of the borough funds in the year of these resolutions was less than the amount of the expenses, but in the subsequent years the surplus was greater than that amount.

Held, upon *mandamus* to the town council to pay these expenses, that there was nothing in the Municipal Corporations Act, 1835, to prevent the payment of this claim.

Per Blackburn, J.: "The question whether this is the right remedy to adopt under the circumstances is for the prosecutors to decide at their peril; all that we are required to do now is to give judgment on the merits of the case. It seems that a resolution by the town council was passed approving of the terms of arrangement entered into by the town clerk with the tramways company, by which, amongst other things, the corporation was to pay the expenses of the company's Act of Parliament, if the corporation should resolve to take the tramways. The corporation, knowing the terms of the agreement, resolved to take the tramways, obtained an Act for the purpose, and afterwards resolved to pay the expenses of the company's Act as fixed by arbitration. The question now raised is, whether the town council has power to pay this sum. The general rule is, that bodies corporate must fulfil their contracts unless forbidden distinctly by some statute. Here this municipal corporation is subject to 4 & 5 Will. 4, c. 76, and the amount claimed cannot be paid out of the borough fund as an expense necessarily incurred in carrying into effect the provisions of that Act; but the 92nd section proceeds to

provide for a surplus which is to be applied under the direction of the council for the public benefit of the inhabitants and improvement of the borough. It seems to me that the Sheffield case goes no further than this: if there is no surplus, an expense which is not within the terms 'carrying into effect the provisions of the Act,' cannot be paid by order of the council out of the borough funds. Here, however, there is annually a large surplus, and although in one particular year it might be insufficient for this claim, there can be no doubt that the great borough of Liverpool can pay as much without a special borough rate. It is said that it ought to be expressly resolved to pay this particular sum out of the surplus, but although that may be the usual practice, it is nowhere rendered necessary. I construe the Act to mean that when a town council has contracted a debt for the benefit or improvement of the inhabitants of the borough, there is nothing to prevent its being paid whenever there is a surplus after satisfaction of the provisions of the Act. No subsequent town council can repudiate their predecessors' debts. Then, is this a contract for the public benefit of the inhabitants and improvement of the borough? The council have admitted it to be so by agreeing to take the tramways; and the legislature has so held by passing these Acts. I see no reason why the corporation should not pay the money claimed. The rule for a *mandamus* therefore must be absolute." (*Reg.* v. *The Mayor, &c., of Liverpool*, 28 L. T. (N.S.) 500.)

It has been held that payments out of the borough fund could not be made for the expenses incurred in defending a criminal information against an alderman for alleged misconduct (*Reg.* v. *Mayor of Bridgewater*, 10 A. & E. 281, and *Reg.* v. *Paramore*, ibid. 286); for the costs incurred in a petition to the Court of Chancery with respect to the appointment of charity trustees (*Reg.* v. *Mayor, &c., of Warwick*, 8 Q. B. 926; S. C. 15, L. J. Q. B. 306); for a gold chain for the mayor (*Attorney-General* v. *Mayor of Batley*, 26 L. T. (N.S.) 392; for the entertainment of distinguished persons when there was no surplus of the borough fund. (*Re Corporation of Sunderland*, T. S. 1878.)

In the case of *Mortimer* v. *The Vestry of Bermondsey* (L. G. C. for May 6, 1882), FRY, J., made an order for a perpetual injunction restraining the vestry from applying any part of the rates or parish funds in or for the expenses of a dinner and ball given in celebration of the opening of the new vestry hall.

Where the Attorney-General at the relation of a ratepayer had sued not only the vestry but six members thereof, for the purpose of obtaining costs from them: It was *held* by the Court of Appeal that as these defendants had had no control of the corporate funds independently of their being vestrymen, and as they had not actually misapplied any funds, they were improperly made parties. (*Attorney-General* v. *Vestry of Bermondsey*, L. G. C., February 17th, 1883.)

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THE SIXTH SCHEDULE.

COUNTIES TO WHICH CERTAIN BOROUGHS ARE TO BE CONSIDERED ADJOINING FOR PURPOSES OF CRIMINAL TRIALS.

Berwick-upon-Tweed ...	... Northumberland.
Bristol	... Gloucestershire.
Chester...	... Cheshire.
Exeter	... Devonshire.
Kingston-upon-Hull ...	... Yorkshire.
Newcastle-upon-Tyne ...	... Northumberland.

THE SEVENTH SCHEDULE.

PROCEDURE FOR SCHEME ON GRANT OF NEW CHARTER.

1. The Committee of Council may, if they think fit, require the draft of a proposed scheme to be submitted to them, either together with the petition for a charter, or at any subsequent period.

2. The draft of a proposed scheme shall be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

3. Before settling the scheme the Committee of Council shall consider any objections which may be made thereto by any local authority or persons affected thereby.

4. The scheme, when settled, shall, besides being published in the London Gazette, be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

5. Where a scheme is submitted to Parliament for confirmation, the Committee of Council may introduce a Bill for the confirmation of the scheme, which Bill shall be a Public Bill.

6. Before such Bill is introduced into Parliament the Committee of Council may alter the scheme in such manner as they think proper.

7th Sched.

7. If while the Bill confirming a scheme is pending in either House of Parliament a petition is presented against the scheme, the Bill, so far as it relates to such scheme, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Private Bill.

8. A scheme shall come into operation at the date of its confirmation or any later date mentioned in the scheme.

9. The confirmation of a scheme shall be conclusive evidence that all the requirements of this Act with respect to proceedings required to be taken previously to the making of the scheme have been complied with, and that the scheme has been duly made, and is within the powers of this Act.

THE EIGHTH SCHEDULE.

FORMS.

Part I.—Declarations on accepting Office.

FORM A.

FORM OF DECLARATION ON ACCEPTANCE OF CORPORATE OFFICE.

I, *A.B.*, having been elected mayor [*or* alderman, councillor, elective auditor, *or* revising assessor] for the borough of , hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability [*and in the case of the person being qualified by estate say*, And I hereby declare that I am seised or possessed of real or personal estate, or both [*as the case may be*], to the value or amount of one thousand pounds, or five hundred pounds [*as the case may require*], over and above what will satisfy my just debts.]

FORM B.

DECLARATION BY RECORDER OR BOROUGH JUSTICE.

I, *A.B.*, hereby declare that I will faithfully and impartially execute the office of recorder [*or* justice of the peace] for the borough of , according to the best of my judgment and ability.

8th Sched.

PART II.

Part II.—Forms relating to Elections.

FORM C.

THE LIST OF BURGESSES of the Borough of , in the Parish [*or* Township] of .

Surname and other Names of each Person in full.	Nature of Property for which he is now rated.	Name and Situation of Property for which he is now rated.
Ashton, John - -	Shop - -	No. 23, Church Street.
Bates, Thomas - -	House - -	Brook's Farm.

(Signed) *A.B.*, *C.D.* } Overseers.

These forms do not apply to any borough, the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough. (41 & 42 Vict. c. 26.) Forms to be used in all such boroughs will be found in a schedule to that Act. (*See* statute in Appendix. *See* note to Form G.)

FORM D.

NOTICE OF CLAIM.

To the Town Clerk of the Borough of .

I HEREBY give you notice, that I claim to have my name inserted in the parish burgess lists of the borough of , that I occupy [*here describe the house, warehouse, counting-house, shop, or other building then occupied by the claimant*] in the borough, and that I have been rated in the parish of [*here state the parish or several parishes, and the time during which the claimant has been rated in each of them within the borough, necessary for his qualification.*]

Dated the day of , in the year .

(Signed) John Allen of [*place of abode.*]

This form applies only to boroughs which are solely municipal. (*See* note on Part II. of this Schedule, Form C.)

Sect. 240, which provides that the forms in this schedule may be used, differs slightly from the repealed statute—the 17th section of the Act of 1835. Under that statute it was decided that any material variation from the form given would render the notice nugatory. (See *Petersfield*, P. & K. 46; *R.* v. *Harwich*, 8 A. & E. 919, 920; *Flight's Case*, *Bedford*, P. & K. 119; *R.* v. *Monmouth* (*Mayor*, &c.), *R.* v. *Bolton* (*Mayor*, &c.), L. R. 5 Q. B. 251.) The notice must state the parish in which the property is situate, in respect of which the claim is made. (*R.* v. *Mayor*, &c., *of Kidderminster*, 2 L. M. & P. 201; S. C. 20 L. J. Q. B. 281.)

It seems that both a notice of claim and a notice of objection should be signed by the party himself and not by his agent. (*Jones*, app., *Cumming*, resp., Bar. & Arn. 347, 7 M. & G. 88.) A signature with only the initials of the Christian name is sufficient. (*R.* v. *Hartlepool* (*Mayor*, &c.), 2 L. M. & P. 666, 21 L. J. Q. B. 71; *R.* v. *Avery*, 18 Q. B. 576, 21 L. J. Q. B. 428; *R.* v. *Bradley*, 3 E. & E. 634.) A date of the day and month without the year would be insufficient. (*Beenlen*, app., *Hoskin*, resp., 4 C. B. 19.)

FORM E.

NOTICE OF OBJECTION.

To the Town Clerk of the Borough of [*or to the person objected to, as the case may be*].

I HEREBY give you notice, that I object to the name of Thomas Bates of Brook's Farm, in the parish of [*describe the person objected to as described in the parish burgess list*] being retained on the parish burgess lists of the borough of .

Dated the day of , in the year .

(Signed) John Ashton of [*here state the place of abode and the property for which he is said to be rated in the parish burgess lists.*]

This form only applies to boroughs which are solely municipal. (*See* note to Part II. Form C. of this Schedule.) This notice need not specify the parish in which the objector's qualifying property is situate (*R.* v. *Mayor of Monmouth*, L. R. 5 Q. B. 251; S. C. 39 L. J. Q. B. 77); nor the description of the property of the person objected to, if the notice contains a description of the person objected to (*R.* v. *Mayor of Bolton*, L. R. 5 Q. B. 253; S. C. 39 L. J. Q. B. 78). As to what is a sufficient notice of objection, see *R.* v. *Mayor*, &c., *of Harwich*, 8 A. & E. 919; S. C. 1 P. & D. 134; *the same*, 1 E. & B. 617.)

8th Sched. PART II.

FORM F.

LIST OF CLAIMANTS.

The following Persons claim to have their Names inserted in the Parish Burgess Lists of the Borough of .

Surname and other Names of each Claimant.	Nature of Property for which he is now rated.	Situation of Property for which he is now rated.	Parish [*or* Parishes] in which he has been rated, as stated in the claim.
Allen, John -	House -	No. 17, High Street.	Rated in the last year in St. Mary's parish in the borough, and in the two preceding years in St. James's parish in the borough.

(Signed) *A.B.*, Town Clerk.

This Form only applies to boroughs which are solely municipal. (*See* note on Part II. Form C. of this schedule; *see* note on Form G.) The example given in this form is inapplicable, so far as the fourth column is concerned, to the existing law (*see* sect. 9 *ante*).

FORM G.

LIST OF PERSONS OBJECTED TO.

The following Persons have been objected to as not being entitled to have their Names retained in the Parish Burgess Lists of the Borough of .

Surname and other Names of each Person objected to.	Nature of Property for which he is now rated.	Situation of Property for which he is said to be now rated in the Overseers List.	Parish in which is the Property for which he is now said to be rated in the Overseers List.
Bates, Thomas -	House -	Brook's Farm.	St. James'.

(Signed) *A.B.*, Town Clerk.

The Revision Court may correct any mistake, and supply any omission in any of these lists in respect to the name or abode of any person, or the description of any property. (Rule 19, Part I., Third Schedule.)

FORM H.

NOTICE.

Borough of . Election of [Councillors, *or* elective Auditors, *or* revising Assessors, *as the case may be*] for the [Ward or several Wards of the] Borough.

Take Notice,

1. That an election of [*here insert the number of councillors, auditors, or assessors, as the case may be*] for the [ward or several wards of the] said borough will be held on the day of .

2. Candidates must be nominated by writing, subscribed by two burgesses as proposer or seconder, and by eight other burgesses as assenting to the nomination.

3. Candidates must be duly qualified for the office to which they are nominated, and the nomination paper must state the surname and other names of the person nominated, with his abode and description, and may be in the following form, or to the like effect:

(Set out Form I.)

4. Each candidate must be nominated by a separate nomination paper, but the same burgesses or any of them may subscribe as many nomination papers as there are vacancies to be filled for the borough [*or* ward], but no more.

5. Every person who forges a nomination paper, or delivers any nomination paper knowing the same to be forged, will be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding six months, with or without hard labour.

6. Nomination papers must be delivered by the candidate himself, or his proposer or seconder, at the town clerk's office before five o'clock in the afternoon of day the day of next.

7. The mayor will attend at the town hall on day the day of , for a sufficient time between the hours of two and four o'clock in the afternoon, to hear and decide objections to nomination papers.

8th Sched. PART II.

8. Forms of nomination papers may be obtained at the town clerk's office; and the town clerk will, at the request of any burgess, fill up a nomination paper.

Dated this day of 18 .

A.B., Town Clerk.

FORM I.

NOMINATION PAPER.

Borough of . Election of Councillors [elective Auditors, or revising Assessors] for Ward in the said Borough [*or* the said Borough] to be held on the day of 18 .

WE, the undersigned, being respectively burgesses, hereby nominate the following person as a candidate at the said election.

Surname.	Other Names.	Abode.	Description.

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
A. B. C. D.	

We, the undersigned, being respectively burgesses, hereby assent to the nomination of the above-named person as a candidate at the said election.

Dated this day of 18 .

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T.	

The number on the burgess roll must be accurately stated, therefore, where instead of the right number 695 the number 704 appeared in such paper, and an objection taken thereto was allowed by the returning officer, although no one had been or could be misled by the mistake, it was *held* that the decision of the returning officer was correct; that the effect of the mistake was not remedied and could not be amended under the provisions of 41 & 42 Vict. c. 26, s. 41; and 35 & 36 Vict. c. 33, s. 13. (*Gothard* v. *Clarke*, L. R. 5 C. P. D. 253.)

A seconder in a nomination paper was described as of *H. Street*. His property was described on the burgess roll as of *W. Street*. The street was generally known as *H. Street*, and its name had only recently been changed to *W. Street*. No one had been misled. The mayor declared the nomination paper to be void. It was *held* that the description of the property of the seconder was sufficient, and that the decision of the mayor was wrong. (*Soper* v. *Mayor of Basingstoke*, L. R. 2 C. P. D. 440.) The surname and other names of the candidate must be stated in full. (See *Mather* v. *Brown*, L. R. 1 C. P. D. 596.)

8th Sched.

PART II.

FORM K.

BALLOT PAPER.

FORM of Front of Ballot Paper.

For Elective Auditors.

Counterfoil. No.			
1	1	CADE. (John Cade, of 22, Wellclose Place, Accountant.)	
2	2	JOHNSON. (Charles Johnson, of 7, Albion Street, Gentleman.)	
3	3	THOMPSON. (William Thompson, of 14, Queen Street, Silversmith.)	

Note.—The counterfoil is to have a number to correspond with that on the back of the ballot paper.

For Revising Assessor.

1	1	BACON. (Charles Bacon, of 29, New Street, Solicitor.)	
2	2	BYRON. (James Byron, of 45, George Street, Commission Agent.)	
3	3	WILSON. (George Wilson, of 22, Hanover Square, Gentleman.)	

FORM of Back of Ballot Paper.

No. . Election of elective auditors [*or* revising assessors] for the borough of to be held on the day of 18 .

The number on the back of the ballot paper is to correspond with that on the counterfoil.

It may be useful to call attention to the following case. In *Woodward* v. *Sarsons*, L. R. 10 C. P. 733, ballot papers marked in the following manner were held to comply with the requirements of the statute. The placing of two crosses, or three crosses, or a single stroke in lieu of a cross, or a straight line, or a mark like an imperfect letter P in addition to the cross, or a cross blurred or marked with a tremulous hand, or a cross placed on the left hand side of the ballot paper, or a pencil line drawn through the name of the candidate not voted for, or a ballot paper torn longitudinally through the centre.

Ballot papers with the name of the voter or of the candidate voted for written opposite to the name of the latter, and not marked with a cross or with the addition of "cu" to the cross, were *held* to be void.

In the case of *MacLaren* v. *Milne Home*, 44 L. T. (N.S.) 289, tried before LOPES and HAWKINS, JJ., the following decisions were given on marking of ballot papers.

A ballot paper may be well marked, although the mark does not discolour the paper or appear to have been made with a pencil, if from any circumstance the court can infer that the marks were intentionally made.

A ballot paper may be well marked for one candidate although a great portion of the cross is opposite the name of another candidate, if the point of intersection of the crossing lines is opposite the name of the former.

A ballot paper marked only with a cross on the back of the paper is bad.

When the marked register shows that a voter has already voted, it is *primâ facie* sufficient for adding his subsequently tendered vote to the poll that he swears he did not previously vote, and that the marked register is wrong.

When the marked register shows that a voter did not vote, it is not conclusive on a scrutiny; but it may be proved that the voter did vote, and his vote on a paper bearing the number of another elector will be valid.

Part III.—Forms relating to Working Men's Dwellings.

FORM L.

FORM OF GRANT BY CORPORATION.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Grant No. .

The mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to them by *A.B.* of hereby grant to the said *A.B.* (herein referred to as the grantee), and his heirs, the site following (that is to say) [*insert description*] with the appurtenances, subject to the following conditions (that is to say):

1. The grantee shall build on the site one working-man's or working-men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, numbered , and under the superintendence and to the satisfaction of the corporation.

8th Sched. PART III.

2. The grantee, his heirs and assigns, shall always maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts, and, in case of the taking down or destruction of the building shall not rebuild it except in manner approved by the corporation.

3. The grantee, his heirs or assigns, shall not add to or alter the character of the building without the consent of the corporation.

4. If at any time the grantee, his heirs or assigns, fail to fully observe and perform any stipulation of this grant, the corporation may, if they think fit, declare that the site is re-vested in the corporation; and thereupon the same, with the dwelling and other buildings thereon, shall become and be vested in the corporation, as if this grant had not been made.

In witness whereof, &c., this day of 187 .

(*Corporate Seal.*)

FORM M.

FORM OF TRANSFER OF GRANT.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Transfer No. . (Grant No. .)

A.B., of , by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to him by *C.D.* of , hereby grants and transfers to the said *C.D.* and his heirs the site comprised in the within-written* grant [*or* the grant No. under the said Act, dated the day of 187 †] with the appurtenances and with the dwelling and other buildings thereon, subject to the conditions on which that site is held immediately before the execution of this transfer.

In witness whereof, &c., this day of 18 .

A.B. (L.S.)

* [In case of transfer by indorsement.]

† [In case of transfer by separate deed.]

8th Sched.

PART III.

FORM N.

FORM OF LEASE BY CORPORATION.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Lease No. .

The mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of paid to them by *A.B.* of and of the rent and stipulations in this lease reserved and contained, and to be by him, his executors, administrators, or assigns, paid and performed, hereby lease to the said *A.B.* (herein referred to as the lessee), his executors and administrators, the site following (that is to say) [*insert description*] with the appurtenances, for the term of [*nine hundred and ninety-nine*] years from the day of , at the yearly rent (clear of all deductions) of , payable by two equal half-yearly payments on the day of and the day of in every year, the first thereof to be made on the day of , and the last thereof to be made in advance on the day of next before the end of the term, and so that on the term being determined by re-entry a proportionate part of the rent for the fraction of the current half year up to re-entry be repayable.

And the lessee hereby covenants with the corporation that he, his executors, administrators, or assigns, will during the term pay the rent on the days and in manner aforesaid, and will pay all taxes, rates, and outgoings for the time being payable by the tenant in respect of the premises.

And this lease is made subject to the following conditions (that is to say):

1. The lessee shall build on the site one working-man's or working-men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, and numbered , under the superintendence and to the satisfaction of the corporation.

2. The lessee, his executors, administrators, and assigns, shall always during the term maintain and repair the building,

8th Sched. Part III.

and shall not sell or alienate the site or building in divisions or separate parts and, in case of the taking down or destruction of the building, shall not rebuild it, except in manner approved by the corporation.

3. The lessee, his executors, administrators, or assigns, shall not add to or alter the character of the building without the consent in writing of the corporation.

4. If at any time the lessee, his executors, administrators, or assigns, fail to duly pay the rent hereby reserved, or to fully observe and perform any stipulation herein contained, the corporation may, if they think fit, re-enter on any part of the site in the name of the whole, and thereupon the term of years shall absolutely cease.

In witness whereof, &c., this day of 187 .

(*Corporate Seal.*)

A.B. (L.S.)

FORM O.

FORM OF ASSIGNMENT OF LEASE.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Transfer No. . (Lease No. .)

A.B. of (herein referred to as the assignor) by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to him by *C.D.* of , hereby assigns to the said *C.D.* (herein referred to as the assignee,) his executors and administrators, the site comprised in the within-written lease* [*or* the lease No. under the said Act, dated the day of 187 †], with the appurtenances, and with the dwelling and other buildings thereon, for the residue of the term of years, at the rent and subject to the stipulations and conditions at and subject to which that site is held immediately before the execution of this assignment.

And the assignee for himself, his executors and administrators, covenants with the assignor, his executors and adminis-

trators, that the assignee, his executors or administrators, will pay the yearly rent and observe and perform the stipulations and conditions aforesaid, and will at all times keep the assignor, his executors and administrators, indemnified in respect thereof.

In witness whereof, &c., this day of 187 .

A.B. (L.S.)
C.D. (L.S.)

* [In case of assignment by indorsement.]
† [In case of assignment by separate deed.]

Part IV.—Forms relating to Borough Bridges.

FORM P.

FORM OF MORTGAGE.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of . Mortgage No. .

We, the mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of paid to them by *A.B.* of for the purposes of the said Act, do grant and assign unto the said *A.B.*, his executors, administrators, and assigns, such proportion of the borough fund and borough rate as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said fund and rate, to hold to the said *A.B.*, his executors, administrators, and assigns, from the day of the date hereof, until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied. And it is hereby declared that the said principal sum shall be repaid on the day of at [*place of payment*].

In witness whereof, &c., this day of 187 .

(*Corporate Seal.*)

8th Sched. PART IV.

FORM Q.

FORM OF TRANSFER OF MORTGAGE.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of . Transfer No. . Mortgage No. .

I, *A.B.* of in consideration of the sum of paid to me by *C.D.* of , do hereby transfer to the said *C.D.*, his executors, administrators, and assigns, a certain mortgage, dated this day of , and made by the mayor, aldermen, and burgesses of the borough of , under the above-mentioned Act, for securing the sum of and interest thereon at per centum per annum [*or, if the transfer is by indorsement on the mortgage, insert, instead of the words immediately following the word "assigns,"* the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the fund and rate thereby assigned.

In witness whereof, &c., this day of 187 .

A.B. (L.S.)

THE NINTH SCHEDULE.

ENACTMENTS IN WHICH A REFERENCE TO THIS ACT IS TO BE SUBSTITUTED.

PART I.

General References.

2 & 3 Vict. c. 93.—An Act for the establishment of county and district constables by the authority of justices of the peace (sect. 24).

5 & 6 Vict. c. 109.—An Act for the appointment of parish constables (sect. 21).

9 & 10 Vict. c. 74.—An Act to encourage the establishment of public baths and wash-houses (sect. 1).

9th Sched. PART I.

10 & 11 Vict. c. 62.—An Act for the establishment of naval prisons, and for the prevention of desertion from Her Majesty's navy (sect. 13).

12 & 13 Vict. c. 35.—An Act for requiring annual returns of the expenditure on highways in England and Wales to be transmitted to the Secretary of State, and afterwards laid before Parliament (sect. 2).

12 & 13 Vict. c. 82.—An Act to relieve boroughs, in certain cases, from contribution to certain descriptions of county expenditure.

13 & 14 Vict. c. 20.—An Act to amend an Act of the fifth and sixth years of Her present Majesty for the appointment and payment of parish constables (sect. 7).

13 & 14 Vict. c. 105.—An Act for facilitating the union of liberties with the counties in which they are situate (sect. 10).

14 & 15 Vict. c. 28.—An Act for the well-ordering of common lodging-houses (sect. 2).

14 & 15 Vict. c. 34.—An Act to encourage the establishment of lodging-houses for the labouring classes (sect. 2).

16 & 17 Vict. c. 73.—An Act for the establishment of a body of naval coast volunteers, and for the temporary transfer to the navy, in case of need, of seafaring men employed in other public services (sect. 24).

16 & 17 Vict. c. 97.—The Lunatic Asylums Act, 1853 (sect. 9).

17 & 18 Vict. c. 71.—An Act to amend the law concerning the making of borough rates in boroughs not within the Municipal Corporation Acts.

17 & 18 Vict. c. 87.—An Act to make further provision for the burial of the dead in England beyond the limits of the metropolis (sect. 3).

17 & 18 Vict. c. 105.—The Militia Law Amendment Act, 1854 (sect. 11).

18 & 19 Vict. c. 57.—An Act further to amend the laws relating to the militia in England (sect. 7).

18 & 19 Vict. c. 121.—The Nuisances Removal Act for England, 1855.

19 & 20 Vict. c. 69.—An Act to render more effectual the police in counties and boroughs in England and Wales.

20 & 21 Vict. c. 81.—An Act to amend the Burial Acts.

9th Sched.
PART I.

22 & 23 Vict. c. 40.—An Act for the establishment of a reserve volunteer force of seamen, and for the government of the same (sect. 25).

23 & 24 Vict. c. 68.—An Act for the better management and control of the highways in South Wales.

25 & 26 Vict. c. 61.—An Act for the better management of highways in England.

26 & 27 Vict. c. 13.—An Act for the protection of certain garden or ornamental grounds in cities and boroughs.

26 & 27 Vict. c. 97.—The Stipendiary Magistrates Act, 1863 (sect. 2).

28 & 29 Vict. c. 126.—The Prison Act, 1865 (sect. 4).

30 & 31 Vict. c. 102.—The Representation of the People Act, 1867.

31 & 32 Vict. c. 22.—The Petty Sessions and Lock-up House Act, 1868 (sect. 3).

31 & 32 Vict. c. 46.—The Boundary Act, 1868 (First Schedule).

31 & 32 Vict. c. 58.—The Parliamentary Electors Registration Act, 1868.

31 & 32 Vict. c. 125.—The Parliamentary Elections Act, 1868 (sects. 43 and 45).

31 & 32 Vict. c. 130.—The Artizans and Labourers Dwellings Act, 1868 (sect. 3).

33 & 34 Vict. c. 75.—The Elementary Education Act, 1870 (sect. 3).

33 & 34 Vict. c. 78.—The Tramways Act, 1870 (Schedule A.).

34 & 35 Vict. c. 56.—The Dogs Act, 1871 (Schedule).

34 & 35 Vict. c. 105.—The Petroleum Act, 1871 (sect. 2).

35 & 36 Vict. c. 38.—The Infant Life Protection Act, 1872 (First Schedule).

35 & 36 Vict. c. 91.—An Act to authorize the application of funds of municipal corporations and other governing bodies in certain cases.

38 & 39 Vict. c. 17.—The Explosives Act, 1875 (sect. 108).

38 & 39 Vict. c. 55.—The Public Health Act, 1875 (sect. 4).

38 & 39 Vict. c. 83.—The Local Loans Act, 1875 (sect. 34).

39 & 40 Vict. c. 56.—The Commons Act, 1876 (sect. 37).

40 & 41 Vict. c. 21.—The Prison Act, 1877 (sect. 59).

41 & 42 Vict. c. 49.—The Weights and Measures Act, 1878 (Fourth Schedule).

41 & 42 Vict. c. 74.—The Contagious Diseases (Animals) Act, 1878 (sects. 7 and 66).

41 & 42 Vict. c. 77.—The Highways and Locomotives (Amendment) Act, 1878 (sect. 38).

PART II.

Particular References.

14 & 15 Vict. c. 55.—An Act to amend the law relating to the expenses of prosecutions, and to make further provisions for the apprehension and trial of offenders in certain cases:

In sect. 24, for Schedule C. to the Municipal Corporations Act, 1835, the Sixth Schedule to this Act.

33 & 34 Vict. c. 91.—The Clerical Disabilities Act, 1870:

In the First Schedule, for sect. 28 of the Municipal Corporations Act, 1835, so much of the provision of this Act relative to disqualifications for being councillor as relates to being in holy orders.

Under this Act a priest or deacon may relinquish his position in the Church of England by deed enrolled as therein mentioned. At the expiration of six months after service of office copy of the enrolment on the bishop of the diocese, the deed is to be recorded in the registry, and thereupon the disability to serve the office of town councillor ceases.

DIVISION III.

In this division it is intended to give a description of the various proceedings necessary under the existing law for the conduct of a municipal election.

In this division the reference to the Municipal Corporations Act, 1882, is by quoting the section or schedule only.

MUNICIPAL ELECTIONS.

Day of Election.

Day of Election.

The ordinary day of election of councillors is the 1st November (sect. 52).

On a casual vacancy the election to supply it must be held within fourteen days after written notice of the vacancy has been given to the mayor or town clerk by two burgesses. The actual day of election is fixed by the mayor (sect. 66). This may be done verbally.

In the computation of the period of fourteen days, Sunday, Christmas day, Good Friday, Monday and Tuesday in Easter week, and days appointed for public fast, humiliation, or thanksgiving are not excluded. If the last day of the time so limited should be one of those days, the election may be held on the next day afterwards, not being one of such days (sect. 230). If the election is not held on the appointed day it may be held on the next day (sect. 70).

Notice of the Election.

Notice of the Election.

Sect. 54 requires that "nine days at least before the day for the election of a councillor the town clerk shall prepare and sign a notice thereof, and publish it by fixing it on the town hall, and, in the case of a ward election, in some conspicuous place in the ward."

The days above mentioned are not excluded in computing this period (sect. 230).

The form of notice is given in the Eighth Schedule, Form II. The forms in that Schedule may be varied as circumstances require (sect. 240).

The notice must be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice relates (sect. 232).

Nomination Papers.

Nomination Papers.

At the time of the publication of the above notice, the town clerk should be provided with a sufficient number of nomination papers to supply any burgess with as many as may be required (Third Schedule, Part II., 6).

Nomination papers are required to be signed by two burgesses, as proposer and seconder, and by eight other burgesses of the borough or ward as assenting to the nomination (*Id.* 2).

For form of nomination paper, *see* Eighth Schedule, Form I.

The town clerk is under no obligation to supply nomination papers to any persons other than burgesses, that is, persons entitled to vote in the election for which the papers are required. He is, however, required upon the request of any enrolled burgess, to fill up a nomination paper (Third Schedule, Part II., 6).

This form need not be followed absolutely. It may be varied as circumstances require; but must be to the like effect as that set forth in the Eighth Schedule (sect. 240.)

Nomination papers.

It will be observed that the form given in that schedule directs the persons nominating and assenting to supply their numbers on the burgess roll, *with* the ward or polling district, if any, having a distinct numbering. The 45th section provides that in boroughs where there are no wards, the burgess roll shall be made in one general roll for the whole borough. In that case no difficulty can arise, as supplying the numbers on such a roll will be a compliance with the requirement of the form. In boroughs where there are wards the burgess roll is made up in ward rolls, one for each ward, and the names are numbered by wards or by polling districts, unless the council direct the same to be numbered consecutively without reference to wards or polling districts (sect. 45 (3)). There seems to be no provision for numbering the burgess roll in wards or polling districts, *and* in one roll where a borough is divided into wards. There cannot be a burgess roll with numbers differing from the numbers of the ward or polling district. The word "with" must, therefore, be read as requiring not only the numbers in the ward or polling districts to be stated, but the description of the ward or polling district must be added. Full particulars of the person nominated are still required; but the signatures and the numbers of the proposer and seconder, and assentors, are now only required. The situation of the property in respect of which they are enrolled is dispensed with.

Nomination papers are required to be delivered at the town clerk's office by the candidate, or his proposer or seconder, seven days at least before the day of the election, and before five o'clock in the afternoon of the last day on which they may be delivered. (Third Schedule, Part II., 7.)

In calculating these days, Sundays and the days before mentioned are to be computed. (*See* sect. 230, and the notes thereon.)

If any candidate nominated be absent from the United Kingdom, his nomination will be void unless at the time of nomination his written consent, given before two

witnesses within one month of the day of his nomination, is produced. (Third Schedule, Part II., 16.)

Nomination papers.

Any person who forges, or fraudulently defaces, or fraudulently destroys, any nomination paper, or delivers to the town clerk any forged nomination paper, knowing the same to be forged, is guilty of a misdemeanour and will be liable to a term of imprisonment. Any attempt to commit any such offence will be punishable in like manner. It will be the duty of the town clerk to proceed against any person so offending. The delivery of the nomination paper by the candidate, or his proposer or seconder, will be some guarantee of its genuineness.

Notice to the Candidates.

Notice to candidates.

Immediately upon the receipt of a nomination paper the town clerk is required to send notice of such nomination to each person nominated. (Third Schedule, Part II., 8.)

It seems desirable, in order that persons nominated may, if they so wish, withdraw from candidature, to state shortly in this notice the steps to be taken for that purpose. As the time during which candidates may withdraw is so very short, it is desirable, whenever practicable, that this notice should be delivered personally. At all events, the town clerk should use the most speedy means of bringing to the notice of the candidates the nominations.

The following form may be used:—

Borough of *N.*

Election of councillors for ward in the said borough [*or* for the said borough.]

To Mr. .

In pursuance of the Municipal Corporations Act, 1882, I hereby give you notice that you have been nominated as a candidate at the election of councillors for ward in the borough of *N.* [*or* for the said borough] to be held on day the day of 18 .

If you do not desire your name to remain as a candidate you may withdraw from candidature by filling in and signing a notice to that effect (which may be in the annexed form) and delivering the same at my office, not later than two o'clock in the afternoon of the day of .

Notice to candidates.

And I hereby give you further notice that the mayor will attend at the town hall, on afternoon, the said day of for a sufficient time, at and after the hour of two o'clock, and will decide on the validity of objections made to nomination papers.

You are entitled to attend such proceedings and to appoint under your hand one other person as your representative for the same purpose, and during the attendance of the mayor, you, and your representative to be appointed as aforesaid, have respectively power to object in writing to the nomination of any other candidate at the said election.

The appointment of your representative may be in the form enclosed, and must be delivered to me before five o'clock in the afternoon of the day of .

Dated this day of 18 .

A. B.

Municipal Offices, *N.* Town Clerk of the said Borough.

Notice of Withdrawal.

Notice of withdrawal.

The notice of withdrawal to be effectual must be signed by the candidate, and must be delivered at the town clerk's office not later than two o'clock in the afternoon of the day next after the last day on which nominations may be delivered. Notices of withdrawal are to take effect in the order in which they are delivered. It is provided, however, that no notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies. (Third Schedule, Part II., 17.) Care should therefore be taken to endorse on each notice of withdrawal the exact time at which it was received by the town clerk.

The following form of withdrawal by a candidate may be used:—

To the Town Clerk of the Borough of *N.*

Election of councillors for ward in the borough of *N.* [*or* for the said borough] to be held on the day of 18 .

I hereby give you notice that I withdraw my name from candidature at the said election.

Witness my hand this day of , 18 .

Objections to Nomination Papers—how disposed of.

Objections to nomination papers.

On the day next after the last day for the receipt of nomination papers, the mayor is to attend at the town hall for a sufficient time, between the hours of two and

four in the afternoon, and decide on the validity of every objection made in writing to a nomination paper. The candidate and a person appointed by him or on his behalf as hereafter mentioned may attend the proceedings before the mayor and object to the nomination paper of any other candidate for the borough or ward, as the case may be. The candidates and their representatives, but no other person, except for the purpose of assisting the mayor, is entitled to be present. The candidate by virtue of his nomination has an absolute right to be admitted. This is not so with his representative, who, in order to be entitled to attend, must be appointed in writing for the purpose under the hand of the candidate, or in case of his absence from the United Kingdom, under the hand of his proposer or seconder. The appointment must be delivered to the town clerk before five o'clock in the afternoon of the last day on which nominations may be delivered. (Schedule 3, Part II., 11.) In practice it will be convenient if this appointment be delivered at the same time as the nomination paper. The candidate's representative need not be a person entitled to vote in the election. He may be the proposer or seconder, or one of the persons assenting to the nomination, or any other person whom the candidate may think fit to appoint. Objections to nomination papers.

The following form may be used in the appointment of the candidate's representative to attend these proceedings:—

Borough of N.

To the Returning Officer at an Election of councillors for ward in the said borough [*or* for the said borough] to be held on the day of 18 , and to the town clerk of the said borough.

I having been nominated as a candidate at the said election [*or* I the proposer *or* seconder of , a candidate at the said election, he being absent from the United Kingdom], do hereby appoint to attend the proceedings before the mayor on my behalf [*or* on behalf of the said candidate] on the day of 18 .

Witness my hand this day of 18 .

The mayor's duty appears to be merely to decide on objections which may be actually made to nomination

Objections to nomination papers.

papers, *such objections being made in writing,* and he has no jurisdiction over objections otherwise made, or over objections which may exist, but to which his attention is not duly called by some qualified objector. *The decision of the mayor on objections* to nomination papers, whether he allows or disallows the same, *must be given in writing.* If the mayor disallows any objection to a nomination paper his decision is final. If he allows the objection, however, his decision is subject to reversal on petition questioning the election or return. (Schedule 3, Part II., 14.)

It is not now necessary for the mayor to continue his sitting until the two hours fixed for this purpose have expired. He need only attend for a sufficient time (Schedule 3, Part II., 9). He would be justified in refusing to re-open the consideration of an objection after having once given his decision thereon.

It may happen in consequence of the mayor's decision on objections to nominations that the number of candidates, excluding those who have given notice of withdrawal, may be less than the number of vacancies to be filled up.

It is suggested that in such a case the last withdrawal would be ineffectual, and the candidate, notwithstanding such withdrawal, unless his nomination should be rejected by the mayor on objection made, must be considered a duly qualified candidate.

The notices of withdrawal cannot, therefore, come into operation until the mayor has finally decided on objections to nominations.

Notice of Candidates duly Nominated.

Notice of duly nominated candidates.

After the mayor has decided on objections to nomination papers, and it is ascertained what persons remain duly nominated, the town clerk is required to cause the surnames and other names of all such persons, with their respective places of abode and descriptions, and the names only of their respective proposers and seconders (but not the names of the other subscribers of the nomination papers),

to be printed and published in the same way as before mentioned with respect to the notice of the election. (Third Schedule, Part II., 15.)

Notice of duly nominated candidates.

This notice must be given at least four days before the day of election. Sundays and the other days mentioned in sect. 230 are not to be computed in these four days (*see* notes on this section). This notice must be given, therefore, in many cases, on the same day as the Mayor's Court. There is no advantage to be obtained from delaying the publication until the last day on which the same may be legally published. It seems advisable on all grounds to publish this notice with as little delay as practicable. The names of the candidates should be arranged in the order in which they will appear on the ballot paper; and it does not appear necessary that the notice should include the names of the candidates who have withdrawn.

The following form may be used:—

Borough of .

Election of Councillors.

Notice is hereby given that the following persons respectively have been duly nominated for the office of councillor of the said borough at an election of councillors for each of the several wards of the said borough [*or* an election of councillors for the said borough] to be held on the day of 18 , that is to say:—

Ward for which the persons are nominated.	Surname.	Other Names.	Abode.	Description.	Proposer.	Seconder.
For *B.* ward						
For same ward						
For same ward						
For *C.* ward						
For same ward						
&c., &c.						

Dated this day of 18 .

A.B.

Municipal Offices, *N.* *Town Clerk.*

The Ballot Papers.

Ballot papers.

Immediately after the mayor has decided on objections to nomination papers, and it is ascertained that an election must be held, the preparation of the ballot papers should have attention.

The Ballot Act, 1872, Schedule 1, Rule 22, provides as follows:—

"Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names; and it shall be in the form set forth in the Second Schedule to this Act, or as near thereto as circumstances admit, and shall be capable of being folded up."

Sect. 62 directs that if the election of elective auditors and that of revising assessors are held at the same time, then, at the poll, one voting paper only shall be used by any person voting. The names of the candidates for the respective offices are to be therein separate, and distinguished so as to show the office for which each is a candidate, and the provisions of the Ballot Act, 1872, are to be varied accordingly.

The Form of the ballot paper to be used at the election of councillors will be found in Part II., Schedule 2, of the Ballot Act, 1872, in the Appendix.

Nothing is to be printed on the ballot paper except in accordance with Schedule 2 of the said Act.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, are to be printed in large characters, as shown in the Form, and the names, addresses, and descriptions, and the number on the back of the ballot paper are to be printed in small characters.

It is important that the space allotted on the ballot paper for each candidate should be so ample that the voter may have a considerable space in which to place the cross

by which he signifies the candidate for whom he intends to vote. Where practicable an inch on the ballot paper should be allowed to each name. If the number of candidates should be excessive this would have to be reduced to prevent the ballot paper becoming unwieldy. Ballot papers.

It will be found convenient to bind the ballot papers in books corresponding with the number of voters allotted to vote at the respective polling stations at which they are to be used. It is left to the judgment of the mayor to furnish each presiding officer with as many ballot papers as he may think necessary. (Third Schedule, Part III., 4.) Great care must be taken to provide sufficient ballot papers, as an error in this respect would probably jeopardise the election. No doubt the mayor would be responsible for a corrupt exercise of the discretion vested in him; but even if he should by an error of judgment provide an insufficient number of ballot papers, and burgesses were deprived of the opportunity of recording their votes to an extent affecting the election, the election would be voidable.

Each book of ballot papers should have on the outside a label with a full description of the name of the borough, ward, and polling station at which it is to be used.

Tendered Ballot Papers.

The 27th Rule in the First Schedule to the Ballot Act, 1872, makes provision for recording the votes of persons who have been personated. The rule provides that if a person representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions, and taking the oath permitted by law to be asked of, and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter. Tendered ballot papers.

In such cases the voter is not to mark an ordinary ballot paper, but the presiding officer is to supply another ballot paper called a "tendered ballot paper," which is to be of

Tendered ballot papers.

a different colour from the ordinary ballot paper though in all other respects similar. This makes it necessary that the mayor should supply each presiding officer with a sufficient number of "tendered ballot papers."

The percentage of tendered votes is very small. One tendered ballot paper for every fifty ordinary ballot papers will commonly be sufficient. It will be found convenient to bind and label the tendered ballot papers in the same manner as the ordinary ballot papers in books of proportionate size.

An opinion has been advanced that the above rule does not authorize the administration of an oath at a municipal election, inasmuch as there was no authority to administer an oath at such an election previous to the Ballot Act, 1872; and that so great a change in the law would have been made by precise enactment.

It seems clear, however, that the legislature has in fact prescribed that an oath shall be taken at a municipal election under certain circumstances, for the poll at a contested municipal election is to be conducted, as far as circumstances admit, and subject to certain modifications which do not affect this question, in the same manner as a poll at a contested Parliamentary election (sect. 58). At a Parliamentary election provision is made for a special case, viz., that in which a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector. In that case, and in that case only, the presiding officer and any clerk appointed by the returning officer to attend at a polling station, have power to administer the oath (Ballot Act, 1872, sect. 10, and Rule 27). It is said, however, that the 59th sect. of the Municipal Corporations Act, 1882, has been substituted for the 27th Rule of the Ballot Act. Such a construction, however, would be contrary to the principles laid down for the interpretation of statutes in *Hill* v. *Hall*, L. R. 1 Ex. D. 411. Moreover, in Part III. of the Third Schedule to the Municipal Corporations Act, 1882, express mention is made of particular rules which it was intended should not apply to the case

of a municipal election, and these rules do not include the 27th. Tendered ballot papers.

Further, the provisions in the 59th sect. of the Municipal Corporations Act, 1882, do not contradict the 27th rule of the Ballot Act. They are supplemental; for the first provides for the case of any burgess who may offer to vote, whilst the 27th Rule provides only for the case of a burgess who applies for a ballot paper after another has voted in his name. In the first instance, on the voter duly answering the questions, he is entitled to vote in the ordinary way. But in the second instance, notwithstanding that the voter complies with the law, he is entitled to a "tendered ballot paper" only, and his vote will not be counted, except upon a scrutiny. The two cases are very different, and the legislature has provided an appropriate method of dealing with each.

The questions will be found in sect. 59. The oath is as follows:—

Oath.

You do swear that you are the same person whose name appears as A. B. on the burgess roll now in force for this borough, and that you have not before voted either here or elsewhere at the present election.—So help you God.

Affirmations.

You, being one of the people called Quakers, do solemnly, sincerely, and truly declare and affirm that [as above]. Quakers.

You, being one of the United Brethren called Moravians, do solemnly, sincerely, and truly declare and affirm that [as above.] Moravians.

You, having been one of the people called Quakers, do solemnly, sincerely, and truly declare and affirm that [as above]. Persons who have been Quakers.

You, having been one of the United Brethren called Moravians, do solemnly, sincerely, and truly declare and affirm that [as above]. Persons who have been Moravians.

You do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare that you are a member of the religious sect called Separatists, and that the taking of any oath is contrary to your religious belief as well as essentially opposed to the tenets of that sect. And you also in the same solemn manner, affirm and declare that [as above]. Separatists.

Persons who object to an oath on religious grounds.

You do solemnly, sincerely, and truly affirm and declare that the taking of any oath is according to your religious belief unlawful, and you do also solemnly, sincerely, and truly affirm and declare that [as above].

Stamping-instrument for Official Mark.

Official mark.

Sect. 2 of the Ballot Act, 1872, provides that at the time of voting the ballot paper shall be marked on both sides with an official mark. The mayor must provide each presiding officer with an instrument for this purpose.

The ballot paper must be marked with the official mark immediately before being delivered to the voter.

Considerable difference of opinion prevails as to the most suitable instrument for this purpose. Some prefer perforation, others embossing, and others an inking stamp. Each has its advantages and disadvantages. The necessity for stamping the ballot on both sides causes the ink stamp to be less expeditious than the other methods, although it has this strong feature in its favour—that the mark can be readily seen. The ballot papers may be embossed or perforated with an ordinary lever press. To stamp the ballot paper both back and front by one operation it is only necessary to fold the paper in two. The embossing presses are not so liable to get out of order as the perforating machines.

An interval of seven years must intervene between the use of the same official mark at elections in any borough. An alteration may be made in both the perforating machine and the embossing press at little expense.

It is desirable to choose such devices as may not be easily forged.

Seal.

Seal.

Each presiding officer must be furnished with a seal to enable him to seal the ballot boxes and documents required to be sealed by him.

The seal may conveniently bear the name of the borough or ward, and the number or other description of the polling station. It is not necessary to observe any secrecy as to the seal; and the same seal will serve for all times.

Ballot Boxes.

Ballot boxes.

Rule 23 of the First Schedule to the Ballot Act, 1872, provides that the ballot box shall be so constructed that ballot papers can be introduced therein but cannot be withdrawn therefrom without the box being unlocked. The presiding officer is required, just before the commencement of the poll, to show the ballot box empty to such persons, if any, as may be present in the polling station, so that they may see that it is empty, and then to lock up the box and to place his seal on it in such a manner as to prevent its being opened without breaking such seal, and to place it in his view for the receipt of ballot papers, and to keep it locked and sealed during the poll.

After the close of the poll the ballot box must be sealed up so as to prevent the introduction of additional ballot papers.

Care must be taken to have the ballot boxes of sufficient capacity to hold the ballot papers of the voters allotted to vote at the respective polling stations where the same are to be used.

The ballot boxes should be labelled in the same way as the books of ballot papers to correspond with the polling stations to which they belong.

Miscellaneous Requirements.

Miscellaneous requirements.

To carry out a municipal election in accordance with the Ballot Act the following forms must be provided:—

Declaration of inability to read; list of votes marked by presiding officer; tendered votes list; ballot paper account; envelope for unused and spoilt ballot papers; envelope for tendered ballot papers; envelope for register; envelope for counterfoils; envelope to contain the two last-named envelopes; envelope for tendered votes list; list of votes marked by the presiding officer and statement of the number of voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable

Miscellaneous requirements.

to read;" the declarations of inability to read; and form of questions and oath.

The following forms may be used:—

Declaration of inability to read, *see* Part II., Schedule 2, of the Ballot Act, 1872, in Appendix.

THE LIST OF VOTES MARKED BY THE PRESIDING OFFICER.

The Ballot Act, 1872.

Election of councillors for ward in the borough of *N. or* (for the borough of *N.*) on the day of 18 .
Polling station, No. .

Number of Voter on the Register.	Name of Voter.	Reason for which Vote marked by the Presiding Officer.*

Statement of the number of voters whose votes are so marked by the presiding officer under the following heads, viz.:—

Physical incapacity - - - -	
Jews - - - - - - -	
Unable to read - - - - -	
Total - - - -	

* "Physical incapacity," "Jew," *or* "unable to read," as the case may be.

THE TENDERED VOTES LIST.

The Ballot Act, 1872.

Election of councillors for ward in the borough of *N.* (*or* for the borough of *N.*) on the day of 18 .
Polling station, No. .

Name of Voter.	Number on Register.

THE BALLOT PAPER ACCOUNT.

Miscellaneous requirements.

The Ballot Act, 1872.

Election of councillors for ward in the borough of
N. or (for the borough of *N.*) on the day of 18 .
Polling station, No. .

Ballot papers received, viz.:—		Ballot papers accounted for, viz.:—	
Ordinary ballot papers - -		Ballot papers in the ballot box - - - -	
Tendered ballot papers - -		Ballot papers tendered -	
		Ballot papers unused, viz.:	
		Ordinary - - -	
		Tendered - - -	
		Ballot papers spoilt - -	
Total - - - -		Total - - - -	

(Signed) *Presiding Officer.*

The following articles must also be provided:—

Envelopes of sufficient size, and cloth lined.

Sealing wax (two sticks to every ballot box is sufficient); matches; penholders and pens; ink; blotting paper; pencils; marking pencils; Old Testament; New Testament.

It is very important that every ballot box should be supplied with all these necessaries. It is recommended that a list should be made of requisites for every ballot box, and each article noted as it is put in the box. The omission of any of the above requisites may cause serious delay. It will be necessary to provide a sufficient number of pencils for the use of the voters in the marking compartments. The pencils should be strong, and should be sharpened at both ends. The presiding officer should have an extra supply of marking pencils in case any are taken away from the compartments.

Polling Districts, Polling Places, and Polling Stations.

Town councils may divide their boroughs or any ward or wards therein into polling districts, and the overseers

Polling districts.

Polling districts.

must prepare the parish burgess lists in conformity with the polling districts (sect. 64).

The borough, or each ward, until the council has exercised the power thus conferred on them, will be a polling district.

It is the duty of the mayor to provide in each district at least one polling place, and at every polling place a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and he must distribute the polling stations amongst those electors in such manner as he thinks most convenient. (First Schedule, Rule 15, Ballot Act, 1872.)

The following form of order dividing the borough or ward into polling districts may be used:—

That this council do hereby, in pursuance of the powers given to them for this purpose, order that the following wards in this borough [*or* this borough] be and the same are [*or* is] hereby divided into the municipal polling districts following, that is to say,

One polling district [here set out the boundaries of the proposed district] to be called "The polling district of ."

[And so on, describing each polling district in the like way.]

And that the town clerk do give public notice of the division of the said wards [*or* borough] into such polling districts.

Construction of Polling Stations.

Polling stations.

Rule 17, First Schedule to the Ballot Act, 1872, provides that a separate room or separate booth (that is, a separate polling place), may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

The question of concentrating a number of polling stations in one polling place or room, is of some importance, and, so far as it enables the returning officer to have more complete supervision of the arrangement, seems desirable, if it does not inconvenience the voters. If this arrangement should, however, cause a large number of persons to collect near the polling place, or should necessitate any of the voters having to go a considerable distance to vote, the inconvenience may overweigh the advantage.

Polling stations.

For the convenience of the voters it is certainly desirable that the polling stations should be fixed at different places in the ward, and for this purpose it will be in many cases advisable to divide the ward into polling districts.

Such buildings or rooms should be selected as polling places as have a separate entrance and exit, so that voters shall proceed constantly in one direction.

The room should be on a level with the street. Steps either up or down stairs are very objectionable.

If arrangements are made for erecting in one room several polling stations, each polling station should be entirely separate from the other. Each station should, so far as practicable, be arranged so that the proceedings in one polling station may not be overheard in the other. The screen between the stations should not be of less height than eight feet.

It is necessary for the convenience of the voters and officers engaged in taking the poll, and for the proper conduct of the elections, that the stations should not be less than twelve feet square.

Each polling station requires a table and a number of seats sufficient to accommodate the presiding officer and his clerk, and the agents of the candidates, if any are appointed.

The table should be provided with a drawer for the safe keeping of the documents and things in the custody of the presiding officer.

The table should be placed at one end of the polling station, and the presiding officer should be seated behind it, facing the entrance. The clerk should sit next to the presiding officer, and the agents on either side of them. There should be a drop bar to separate the officers and agents from the voters. This arrangement will prevent the agents getting in front of the table or near the marking compartments. The presiding officer should insist on the agents remaining in the places appointed for them.

The ballot box should be placed in the centre of the table.

Polling stations.

The marking compartments should be placed against the side of the polling station, opposite to the presiding officer, so that he may see at a glance that the provisions of the Ballot Act are not infringed. In order to hide more effectually the marking compartments from the observation of persons passing in and out of the polling station, a screen of a sufficient height may be placed alongside the marking compartments.

Marking Compartments.

Marking compartments.

The mayor is to furnish every polling station with such number of compartments, in which the voters can mark their votes screened from observation, as in his judgment may be necessary for effectually taking the poll. (Third Schedule, Part III., 4.)

The number of voters allowed by the Ballot Act (First Schedule, Rule 16), namely, 150, for which a separate compartment must be provided, has in practice proved to have been well considered. It will not be found advisable, except in special circumstances, to assign more than 150 voters to a single marking compartment at a strongly contested election.

As to the construction of Marking Compartments.

Each marking compartment should be constructed of such width as to be capable of accommodating the voter. For this purpose a width of thirty inches will be found sufficient. It should be at least seven feet in height, and constructed so as to fold up, with a lid or desk at the back, at a convenient height from the ground.

The voter may be effectually screened whilst marking his vote, by placing a curtain in the front of a marking compartment thus constructed. There does not, however, appear any necessity for this, if care is taken to have the marking compartments of the width mentioned, as in that case the body of the voter will act as a complete screen.

Directions for the Guidance of Voters.

Directions to voters.

The Second Schedule to the Ballot Act, 1872, prescribes the form for the guidance of voters in voting, and directs that the same shall be printed in conspicuous characters and placarded outside every polling station, and in every marking compartment of every polling station.

For form of directions for the guidance of voters, *see* Schedule 2 of the Ballot Act, 1875, in Appendix.

Care should be taken that in selecting illustrations of the form of a ballot paper the surnames of persons who are candidates at the election are not used. In some cases the voters might be misled thereby.

Returning Officers.

Returning officers.

In boroughs not divided into wards, the mayor is the returning officer. In boroughs divided into wards, the respective aldermen appointed by the council, are the returning officers for the several wards (sect. 53).

Presiding Officers and Clerks.

Presiding officers and clerks.

The mayor must appoint an officer to preside at each polling station and all such officers as may be necessary for effectually conducting the election. It will be found necessary, in addition to the presiding officer, to appoint a clerk at each polling station to act under his directions. In the selection of persons to perform the onerous duties to be carried out by these officers great care should be taken, as the proper conduct of the election must in a great measure depend upon their discretion and ability. Presiding officers should be thoroughly conversant with the duties they have to perform, so as to be prepared for any emergency which may arise during the course of the day at their respective polling stations. In practice it will be found best to secure the services of solicitors as presiding officers.

Presiding officers and clerks.

The "directions for the guidance of presiding officers and clerks" detail the whole of the duties of these officers, and contain instructions as to every probable contingency upon which they are likely to require guidance.

For form of these directions, see *post*, p. 302.

As to the liability of officers for misconduct, *see* sect. 11 of the Ballot Act, 1872, in the Appendix.

Agents of Candidates.

Agents of candidates.

Nothing in the Ballot Act, 1872, as applied by the Municipal Corporations Act, 1882, is to be deemed to authorize the appointment of any agents of a candidate at a municipal election; but if, in the case of a municipal election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer one clear day before the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, as far as regards that agent, apply in the case of that election (sect. 58 (6)).

Rule 21, First Schedule of the Ballot Act, 1872, gives the agents of the candidates a right to be present in the polling station.

By Rule 26 of the same schedule votes directed to be marked by the presiding officer must be marked in the presence of the agents.

By Rule 27 of the same schedule an agent may require the presiding officer to put the questions and administer the oath to voters. (*See* also sect. 59 (1)).

By Rule 29 of the First Schedule of the Ballot Act, 1872, the presiding officer is to make up the packets mentioned therein in the agents' presence, and they may affix their seals thereto.

By Rule 31 of the same statute, the candidates may appoint agents to attend the counting.

Rule 32 of the same schedule entitles such agents to written notice of the time and place appointed for the counting.

Agents of candidates.

By Rule 34 of the same schedule the ballot boxes must be opened in the presence of the agents.

By Rule 35 of the same schedule the agents may affix their seals upon the ballot papers and other documents during any interval in the counting.

By Rule 36 of the same schedule an agent may object to the rejection by the returning officer of any ballot paper.

By Rule 37 of the same schedule the ballot paper accounts must be verified in the agents' presence, and the agents may copy the returning officer's report.

By Rule 51 of the same schedule an agent may be assisted by his principal, and his duties may be performed by the principal.

Rule 52.—The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at least before the opening of the poll, and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid.

Rule 53.—If any person appointed an agent by a candidate for the purpose of attending at the polling station or at the counting of the votes, dies or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

By Rule 54 of the same schedule, agents must make the statutory declaration of secrecy before the opening of the poll.

It will thus be seen that though the Act does not authorize, it permits, the appointment of agents to attend at the poll, and the counting of the votes.

It will be a matter of convenience to the returning officer, if the names of the agents are transmitted to him, by the candidates, on a form to be provided by the returning officer, which should state the names

Agents of candidates.

of the agents appointed, and the particular polling station to which each agent is allotted, and the names of the agents who will attend the counting of the votes.

The Act does not limit the number of agents whom candidates may appoint either to attend at the polling stations or at the counting of the votes. The number, however, should not be unreasonable, and the returning officer would be justified in refusing admission to an excessive number of agents.

One agent for each candidate at each polling station, and four for each candidate at the counting of the votes, have been found to be a sufficient number. Each agent should be supplied with a card showing that he has been duly appointed, and he should be required to show the card to the presiding or returning officer on commencing his duties.

The following form may be used:—

Borough of

Election of councillors for ward in the said borough (*or* for the said borough) to be held on the day of 18 .

To

On behalf of the returning officer at the said election I hereby give you notice that if it is your intention to appoint persons to act as your agents at the polling stations at the said election you must notify to me the appointment of such persons and the stations at which they are to act, not later than o'clock in the evening of the day of

You must also state whether any of the same persons are appointed to attend as your agents at the counting of the votes, and if not you must state the names of the persons who are so appointed. You may appoint one person to act as your agent at each polling station, and not more than persons to attend at the counting of the votes.

If the information now requested is not forthcoming at the time before mentioned, the appointments cannot be confirmed. The votes recorded at the said election will be counted at o'clock in the afternoon of the day of election at . The persons appointed must attend at on evening next at o'clock to make the declaration of secrecy required by the Ballot Act, 1872.

If you intend to be present at any polling station, or at the counting of the votes, you should also take the declaration of secrecy.

Dated this day of .

Town Clerk.

A form is enclosed which if you please you may fill up and return to me addressed to the returning officer.

Agents of candidates.

The form to be enclosed may be the following:—

Borough of .

To the returning officer at the election of councillors for ward in the said borough [*or* for the said borough] to be held on the day of 18 .

I having been duly nominated as a candidate at the said election do hereby appoint the following persons to act as my agents at the polling stations at the said election, namely:—

Polling Station No. 1. (Names.)
„ No. 2.
„ No. 3.
„ No. 4.
„ No. 5.
And so on.

I also appoint the following persons to attend at the counting of the votes, namely:—

According to the number in each case limited.

1 (Names) of, &c.
2 „
3 „
4 „
5 „
6 „
7 „
8 „
9 „
10 „
11 „
12 „

Witness my hand, this day of 18 .

A. B.

By Rule 32 of the First Schedule of the Ballot Act, 1872, the returning officer must give to the agents of the candidates appointed to attend the counting of the votes notice in writing of the time and place at which he will begin to count the same.

The following form may be used:—

Borough of

Election of councillors for ward in the said borough [*or* for the said borough] to be held on the day of 18 .

To Mr. .

I, the undersigned returning officer at the said election, do hereby give you notice that I shall proceed to count the votes recorded at the said election at o'clock in the afternoon of the day of election at .

Agents of candidates.

If you intend to be present at the counting of the votes you must attend at the on at o'clock, to make the declaration of secrecy required by the Ballot Act, 1872.

Dated this day of 18 .

Alderman [*or* Mayor], Returning Officer.

Notice of Polling Places.

Notice of polling places.

The mayor must four days at least before the day of election give public notice of the situation, division, and allotment of polling places for taking the poll at the election and of the description of the persons entitled to vote thereat and at the several polling stations. (Third Schedule, Part III., 2.)

It is desirable that this notice should be published as early as possible after it has been ascertained that an election must be held, in order that the electors may have an opportunity of becoming well acquainted with the situation of the polling places and polling stations.

It is provided by sect. 69 that a municipal election shall not be held in any church, chapel, or other place of public worship. (*See* note on this section, *ante*.)

The Declaration of Secrecy.

Declaration of secrecy.

Rule 54, in the First Schedule to the Ballot Act, 1872, provides that every returning officer, and every officer, clerk, or agent authorized to attend at a polling station or at the counting of the votes, shall before the opening of the poll make a statutory declaration of secrecy in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace, or of the returning officer.

For form, *see* Schedule II. of the Ballot Act, 1872, in the Appendix.

The names of the agents appointed by the candidates to attend the polling stations, and at the counting of the votes, having been ascertained, and the officers and clerks having been selected, the mayor will appoint some day and hour for taking the declarations of these persons.

Declaration of secrecy.

It will be found advisable to appoint the evening of the day before the day of election for this purpose.

The forms of declarations should be filled in so far as practicable so that the proceedings may not be delayed.

The mayor is the best person to take these declarations. He must, however, if he is the returning officer, himself make a declaration before another justice of the peace. In the case of a borough divided into wards the mayor, town clerk, and other officers, not acting at the polling stations, but whose duties may call them there during the day of election, or at the counting of the votes, should make this declaration as to each ward. It seems desirable that candidates should make the declaration of secrecy before the commencement of the poll. The returning officer or presiding officer has, however, no power to exclude a candidate from any polling place or from the counting, though he has not made the declaration of secrecy. (See *Clementson* v. *Mason*, 10 L. R. C. P. 209; 32 L. T. (N.S.) 325.)

Appointment of Officers and Clerks.

Appointment of officers and clerks.

The presiding officers and clerks appointed to attend the poll and at the counting of the votes should be formally appointed by the mayor, and such appointment should describe the particular polling station at which the officer is to act. Each presiding officer and clerk when he has made the declaration should be given his appointment, and a copy of the directions for the guidance of presiding officers and clerks, and each presiding officer should be furnished with the key of his ballot box.

The following form of appointment may be used:—

Borough of *N.*

Election of councillors for ward in the borough of *N.* [*or* for the borough of *N.*] to be held on the day of 18 .

I, the undersigned mayor of the borough of *N.*, do hereby appoint Mr. presiding officer (*or* clerk) at the said election, to act at polling station No. situate .

Given under my hand this day of 18 .

Appointment of officers and clerks.

The agents, if any are appointed, should after they have made the declaration of secrecy be furnished by the mayor with a card, showing the appointment and stating the polling station where they are to act. The presiding officers and clerks, having made the declaration of secrecy, should also be furnished with cards authorizing them to attend at the polling stations, or at the counting of the votes, as the case may be.

In boroughs divided into wards the aldermen of the respective wards who are returning officers must before the commencement of the election make the declaration of secrecy before a justice of the peace.

The Fourth Section of the Ballot Act, 1872, must be read by the person taking the declaration to each declarant before he takes the declaration of secrecy. As the section is of considerable length it will be found advantageous to read the section to as large a number of persons as possible at the same time, but care must be taken that every person who takes the declaration has heard the section read.

The Poll.

The poll.

The mayor should make arrangements for taking the ballot boxes to the polling stations before a quarter to nine on the morning of the election. The ballot boxes should be locked, and left in charge of the constables at the respective stations, who should be instructed to be at their posts not later than half-past eight. If it is not convenient for the mayor to send the boxes to the polling stations, each presiding officer should call at the town clerk's office for his ballot box on the morning of the election. It seems very undesirable to allow the presiding officer to have the custody of the ballot box and its contents on the evening previous to the election. The poll is to commence at nine o'clock in the forenoon, and close at four o'clock in the afternoon of the same day (sect. 58 (3)). But if an hour elapses during which no vote is tendered, and the returning officer has not received notice

that any person has within that hour been prevented from coming to the poll by any riot, violence, or other unlawful means, the returning officer may, if he thinks fit, close the poll at any time before four o'clock (sect. 58 (4)). The poll.

There may be cases in which it is practicable to take advantage of these provisions. It seems almost impossible, however, to do so if the polling places are numerous or widely apart unless instantaneous communication is established between them. It has been found comparatively easy, but expensive, to establish such communication by means of a telephone or telegraph.

The presiding officer should be at his polling station at least a quarter of an hour before the time fixed for the commencement of the poll.

He should see that no persons come into the polling station beside the clerks, the candidates, and their agents. He should require each agent to produce his authority to be present at the polling station, and should see that the person is the person appointed, and not a substitute.

The agents should be accommodated at the table, and should be required to take their positions behind the barrier separating the voters from the officer's table.

The presiding officer should see that the agents do not interfere with, or talk to, the voters, and should take care that the provisions of sects. 3 and 4 of the Ballot Act are not infringed by any person in his polling station.

Presiding officers should make themselves thoroughly acquainted with their duties, and in the event of any questions arising upon which there is any doubt should immediately refer to their instructions. The town clerk or his deputy should be in attendance at some defined place during the election in order to advise on any difficulty that may arise.

The following form contains as far as can be foreseen instructions to the presiding officer how to act in any emergency or difficulty that may arise during the poll :—

Presiding officers and clerks,

INSTRUCTIONS TO PRESIDING OFFICERS AND CLERKS.

The Ballot Act, 1872.

Directions for the Guidance of Presiding Officers and Clerks at the taking of the Poll.

Before the commencement of the poll, the presiding officer will examine the contents of the ballot box, and see that all the requisites are there, and in case of any deficiency he will at once communicate with the town clerk.

The poll will open at 9 o'clock. Presiding officers and clerks must be at their stations a quarter of an hour before that time in order that there may be no delay in opening the poll.

There will be one presiding officer and one clerk at each polling station.

The clerk and agents must show their appointment cards to the presiding officer.

Immediately before the commencement of the poll the presiding officer will show the ballot box empty to such persons as may be present.

He will then lock the box and seal it so as to prevent its being opened without breaking the seal, and shall keep it so locked and sealed, and in his view.

On a voter applying for a ballot paper, the presiding officer will ask his name, and will then refer to the register for such name, and on finding it call out the number, name, and description of the voter as therein stated.

The clerk will then—

(1.) Mark the number of the voter on the counterfoil of the ballot paper, in the square immediately below the printed number.

(2.) Fold the ballot paper and tear it from the counterfoil.

(3.) Stamp the ballot paper so folded near the centre.

(4.) Deliver it to the voter.

The presiding officer will then place against the voter's number on the register a tick or mark to denote that he has received a ballot paper.

The presiding officer shall, if required by two burgesses, or by a candidate or his agent, put to any person offering to vote, at

the time of his presenting himself to vote, but not afterwards, the following questions, or either of them— Presiding officers and clerks.

(*a*) Are you the person enrolled in the burgess [*or* ward] roll now in force for this borough [*or* ward] as follows ? (*Read the whole entry from the roll.*)

(*b*) Have you already voted at the present election (*add in case of an election for several wards*, in this or any other ward) ?

The vote of a person required to answer either of these questions shall not be received until he has answered the first in the affirmative, or the second in the negative.

The first of these questions is as to the identity of the *person*, and not as to the identity of *name*. The inquiry is not whether the voter's name is *e.g.* A. B., but whether he is the person who is enrolled as A. B., whatever his name may really be. The person actually registered may, therefore, safely answer this question although his name is incorrectly stated on the register.

If any person wilfully makes a false answer thereto he is guilty of a misdemeanour.

No other inquiry is permitted as to the right of any person to vote.

In case there is any question really affecting the voter, and which may lead to ulterior proceedings, the presiding officer should make a memorandum of the number and name of the voter for reference.

The presiding officer will not refuse a ballot paper to a voter on account of any misnomer or inaccurate description in the register, if such voter be on the register and the presiding officer be satisfied of the identity of the person applying for the same. Any discrepancy in, or the omission of any voter's name from, the part of the register supplied to the station will, if such be the case, be corrected or supplied by the town clerk at any time during the polling.

If a person representing himself to be a particular elector, applies for a ballot paper after another person has voted as such elector, the presiding officer will, upon the applicant duly answering the foregoing questions, and taking the oath, deliver to him one of the coloured ballot papers called "tendered ballot papers," instead of an ordinary ballot paper, and the clerk will enter the name of the elector and his number on the register on "the tendered votes list."

Presiding officer and clerks.

If the applicant declines to answer the questions or to take the oath, the presiding officer must not deliver to him a tendered ballot paper.

Before a tendered ballot paper is delivered to a voter it must be marked with the official mark, the same as an ordinary ballot paper.

The presiding officer will mark on the back of each "tendered ballot paper" the name and number of the voter tendering the same.

"Tendered ballot papers" must not be put into the ballot box, but must be set aside in the separate packet endorsed "tendered ballot papers."

If any voter applying for a ballot paper states that he is unable to read, the presiding officer will administer to such voter "The Declaration of Inability to Read," and will in the presence of any of the agents of [the candidates who shall be present, mark the vote of such voter in the manner directed by him, and cause the ballot paper so marked to be put into the ballot box.

In case the voter does not know the names of the candidates for whom he wishes to vote, and presents a card upon which the names of the candidates are printed, and against certain names are placed crosses, and the voter directs the presiding officer to mark the ballot paper in the same way, the presiding officer must act accordingly. In the event of the voter having no such card, the presiding officer should read the names of the candidates, commencing at the first and continuing to the last, and should at each name ask the voter if he wishes to vote for such candidate.

On the application of any voter who is incapacitated by blindness or other physical cause from marking his vote, or (if the poll be taken on a Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to mark his vote in the manner prescribed, the presiding officer will mark the vote of such voter in the manner above mentioned, and cause the ballot paper so marked to be put into the ballot box. In case the voter is incapacitated by blindness or other physical cause, or is of the Jewish persuasion, the "Declaration of Inability to Read," need not be administered.

The presiding officer will not suffer any person except the authorised clerk, the candidates and agents, to be present in the compartment at the voting of any voter for whom he marks a ballot paper.

Presiding officers and clerks.

The clerk will enter on the "list of votes marked by the presiding officer," the number on the register and the name of each voter for whom the presiding officer marks a ballot paper, and in the third column he will state the reason why it is so marked.

He will also make out a statement of the number of voters whose votes have been so marked, distinguishing them under the heads:

"Physical Incapacity,"
"Jews," and
"Unable to Read."

Should a voter inadvertently spoil his ballot paper, the presiding officer on being satisfied as to such inadvertence, will furnish him with another ballot paper, and immediately cancel, but not destroy, such spoilt ballot paper, and will at the close of the poll seal up with the unused ballot papers all spoilt ballot papers.

The presiding officer will not deliver a ballot paper to any person whose name does not appear in the portion of the register furnished to him, nor to any persons whose names are marked with an asterisk. Such last-named persons can vote in other wards in respect of other qualifications. (*See* the foot-notes in the register.)

The presiding officer will on a voter presenting a ballot paper, bearing the official mark on the back (except a tendered ballot paper) allow him to place such paper in the ballot box.

The presiding officer will keep order in his station, and permit no one to enter except the voters, the candidates, and the authorised agents. He will not allow a greater number of voters in the station at a time than there are compartments; he will see that the voting is not hurried or hindered in any way, and will concentrate his attention particularly on observing that each ballot paper before it is put into the ballot box bears the official mark, and on the administration of declarations of inability to read, and the marking of ballot papers which he may be required to mark.

He is empowered to order any constable in attendance to remove any person misconducting himself or failing to obey his lawful orders. If the offender is a voter and has not voted he must be allowed to vote.

He will see that the voters vote without undue delay, and are not interfered with or instructed in any way by the agents or by each other, and that they quit the polling station immediately after voting. He may give the voters general instructions as to

Presiding officers and clerks.

the way in which ballot papers are marked in case such instructions are necessary.

The poll will close at 4 o'clock p.m. *i.e.*, as soon as the clock has struck the first stroke of the hour. The presiding officer will not give out any ballot paper after 4 p.m., even to voters who may have entered the station before 4 p.m. The presiding officer will allow voters who have received ballot papers before 4 p.m. to mark the same and put them in the box even after that time, provided that no undue delay occurs in so doing. Greenwich time is to be observed.

At the close of the poll the presiding officer will close the aperture of the ballot box so as to prevent the introduction of additional ballot papers, and will in the presence of the agents of the candidates (if any) make up into separate packets, sealed with his own seal and the seal of such agents as desire to affix their seals—

(1.) The ballot box unopened with the key attached.

(2.) The unused and spoilt ballot papers, both tendered and ordinary, placed together.

(3.) The tendered ballot papers marked by the voters.

(4.) The register and the counterfoils of the ballot papers, both tendered and ordinary, used and unused. The register and the counterfoils must be enclosed in separate packets, and then both such packets must be enclosed in another separate packet.

(5.) "The tendered votes list" and "the list of votes marked by the presiding officer," together with the statement of the number of voters whose votes have been so marked. The Declarations of Inability to Read are to be enclosed in this packet.

He will deliver the ballot box and such packets to the returning officer; accompanied by

(6.) A "ballot paper account," accounting for the number of ballot papers, under the heads—

Ballot papers in ballot box.
Ballot papers unused.
Ballot papers spoilt.
Ballot papers tendered.

The presiding officer will see that all forms and documents requiring his signature are duly filled up and signed.

Presiding officers and clerks.

The presiding officer may permit any of the acts which he is required or authorised to do, except ordering the removal of any person, to be done by his clerk; but no person shall be allowed to put any ballot paper in the ballot box, except in the presence of the presiding officer.

Under the Ballot Act, 1872, sect. 3—

Any officer or clerk in attendance at a polling station who

Forges or counterfeits, or fraudulently defaces, or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or

Without due authority supplies any ballot paper to any person; or

Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or

Fraudulently takes out of the polling station any ballot paper; or

Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election,

Will be liable to imprisonment for two years with hard labour; any attempt is punishable in like manner.

Sect. 4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of

Presiding officers and clerks.

the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

Close of the Poll.

Close of the poll.

The poll will close at 4 o'clock by Greenwich time. The precise time is immediately the clock has struck the first stroke of the hour. There is some difficulty in determining what course should be followed in the case of voters who have entered the polling station, but have not voted before 4 o'clock. In the case of *Gribbin* v. *Kirker*, 7 Ir. R. C. L. 30—C. P., and Fisher's Digest, 1870-80, vol. i. 1477, a municipal election which was held under the Municipal Corporations Act (3 & 4 Vict. c. 108), Ireland, and the Ballot Act, 1872, was declared void, on the ground that votes were received after 4 o'clock p.m., though the outer door of the house in which the poll took place was closed at the proper hour, and no votes were afterwards received except from electors who were inside before the door was closed. In this case votes were received for an hour after the time fixed for closing the poll, and it may be inferred from the report of the case that ballot papers were issued to persons who did not apply for them until after such time. It has been suggested that no ballot paper should be allowed to be deposited in the ballot box after 4 p.m.; but that all papers applied for and issued before 4 p.m., and not then deposited in the ballot box, should be allowed to be marked in the ordinary way, and all other matters in relation to voting should be

done in the same way (*e.g.* the marks in the register being allowed to continue), except only that, instead of being deposited in the ballot box, the papers should be placed with the "tendered ballot papers," and sealed up with them, and not counted. It would then, it is said, be possible to set any mistake right on a scrutiny. Presiding officers and clerks.

This, however, is a course which cannot be recommended, inasmuch as the reception of all such papers by the presiding officer as had been marked by the voters, would reveal to him the way the voters had voted, and thereby destroy the secrecy of their voting. Further, such votes are not "tendered votes," within the meaning of the rules of the Ballot Act, and there is no authority for placing them with the "tendered ballot papers." Nor does it seem advisable to treat these papers as unused ballot papers, and to cancel the marks placed in the register against the names of persons who have received such papers.

The presiding officer ought to permit voters who have received ballot papers before 4 o'clock to mark them and put them in the box, even after that time, provided that no undue delay occurs in so doing, but ballot papers should not be given out after 4 o'clock even to voters who may have entered the polling station before that hour. (See *Re The Birmingham Town Council*, L. G. C. April 7, 1883).

No election, however, can be declared invalid by reason of a non-compliance with the rules, if it appears to the election court that the election was conducted according to the principles laid down in the Ballot Act, and that non-compliance has not affected the result of the election. (*See* sect. 13 of Ballot Act, 1872, and the notes thereon in Appendix.)

Duties of Returning Officers.

We have hitherto confined ourselves almost exclusively to the duties of the mayor, presiding officers, and clerks, and the agents of the candidates. In fact, the duties of the returning officer during the poll are merely nominal, unless under special circumstances. After the close of Duties of returning officers.

Duties of returning officer.

the poll all the subsequent proceedings are to be done under the direction of the returning officers. Returning officers should therefore be well informed as to their duties, powers, and responsibilities.

The returning officer may, if he thinks fit, preside at any polling station. (First Schedule, Rule 47, Ballot Act, 1872.)

It is the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation. (Sect. 24, Ballot Act, 1872.)

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at the election, as well as the property in the counterfoils. (Sect. 3, Ballot Act, 1872.)

It would also appear that the returning officer is the proper person to institute proceedings for infringement of sect. 4 of the Ballot Act, 1872, as to secrecy at the poll and counting of the votes.

The following directions for the guidance of returning officers have been prepared with a view to illustrate in a concise and yet ample manner the duties of returning officers, and a system to be pursued in counting the votes. It is hardly necessary to say that the returning officer is entitled in all matters of difficulty to the advice of the town clerk.

These duties group themselves under the following heads:—

(1.) The close of the poll.
(2.) The counting of the votes.
(3.) The rejection of ballot papers.
(4.) The declaration of the poll.

1*st. The Returning Officer's Duties at the close of the Poll.*

The returning officer will at the close of the poll receive from each presiding officer,—

1. The ballot box, unopened, with the key attached.
2. The unused and spoilt papers placed together.

3. The tendered ballot papers.
4. The register and the counterfoils of the ballot papers sealed up separately, and then placed in one packet.
5. The "tendered votes list," and "the list of votes marked by the presiding officer," accompanied by a statement of the number of voters whose votes have been so marked.
6. A "ballot paper account," accounting for the number of ballot papers entrusted to the presiding officer.

Duties of returning officer.

As each presiding officer arrives with his ballot box and other documents at the appointed place the returning officer should receive the ballot box, the ballot paper account, and the packet of unused ballot papers; these should be placed at the top of the respective ballot boxes to which they belong, and the remaining documents of each presiding officer should be placed apart, as they will not be required in the counting of the votes. Great care must be taken that none of the packets are lost.

2nd. The Duties of the Returning Officer in counting the Votes.

The returning officer is required to make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and to give to the agents of the candidates appointed to attend at the counting of the votes, notice in writing of the time and place at which he will begin to count the same.

No other person than the returning officer, his assistants and clerks, the candidates and their agents, except with the sanction of the returning officer, may be present, and the returning officer should take steps to see that no other persons are present.

Before proceeding to count the votes the returning officer, his assistants or clerks will, in the presence of the agents, count and record the number of papers in each box, and see that the number is the same as stated in the

Duties of returning officer.

ballot paper account, and in case of any discrepancy a memorandum should be indorsed to that effect on the back of the ballot paper account. The returning officer should then mix together the whole of the ballot papers contained in the ballot boxes.

He will keep the papers face upwards, and take every precaution to prevent the printed number on the back of the ballot papers from being seen.

He will, as far as practicable, proceed continuously with the counting, allowing only time for refreshment, and will (except so far as he and the agents otherwise agree) exclude the hours between seven o'clock at night and nine o'clock on the succeeding morning.

During the excluded time the ballot papers and other documents relating to the election are to be placed under the seal of the returning officer and the seals of such of the agents as may desire to affix their seals, and the returning officer will take every precaution for the security of the papers and documents.

The returning officer will decide on the validity of the several ballot papers, and his decision is final, subject to reversal on petition.

The returning officer may reject any ballot paper on any of the following grounds, viz.:—

(1.) Want of official mark.

(2.) Voting for more candidates than entitled to.

(3.) Writing or mark by which voter could be identified.

(4.) Unmarked or void for uncertainty.

He will indorse any ballot paper which he may reject as invalid with the word "rejected," and will add to the indorsement "rejection objected to" if any agent object to his decision.

Where there is an equality of votes between any candidates, and the addition of a vote would entitle any of the candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing.

Upon the completion of the counting he will seal up in separate packets the counted and rejected ballot papers. Duties of returning officer.

He will not open the packets marked "tendered ballot papers," or "marked copy of register of voters" and "counterfoil ballot papers."

He will, in the presence of the agents of the candidates, verify the ballot paper account of each presiding officer, by comparing it with the number of ballot papers recorded as taken out of his box at the commencement of the counting, and the unused and spoilt ballot papers, and the tendered votes list, and will see that the number of ballot papers used, unused, and spoilt, comprises the whole of the ballot papers entrusted to the presiding officer.

He will on the completion of the examination, re-seal each sealed packet, and see that each packet is indorsed with a description of its contents and the particulars of the election to which it relates.

Lastly, he will report to the town clerk the result of such verification, and the number of ballot papers rejected and not counted by him, under the several heads before mentioned, and deliver such report to him, together with all documents and things connected with the election.

He will, if requested, allow any agents of the candidates to make a copy of such report before it is sent to the town clerk.

The following form of report may be used:—

To the Town Clerk of the Borough of .

I being the returning officer for ward, at an election of councillors by the burgesses of the said ward, held on the day of 18 ,

REPORT,

That the number of votes recorded for each candidate nominated was as follows:—

Duties of returning officer.

That ballot papers were rejected by me as invalid under the following heads, namely:—

Want of official mark - - - - -	
Voting for more candidates than entitled to - - - - - - - - -	
Writing or mark by which voter could be identified - - - - - - -	
Unmarked or void for uncertainty - -	

That the number of ordinary ballot papers taken out of the ballot boxes was - - - - - - - - - -

That the number of spoilt ballot papers was - - - -

That the number of tendered ballot papers issued was -

_____ *Returning Officer.*

*** The returning officer may report any special circumstances connected with the election, and he will hand his report to the town clerk, together with all documents and things connected with this election.

The following system is suggested for the guidance of returning officers in counting the votes:—

The appointment of officers to attend the counting of the votes rests with the mayor, who will exercise his discretion as to the staff required for the purpose. (Third Schedule, Part III., 3.) It is hardly necessary to say that the larger the staff the more quickly the result of the election will be ascertained. It seems very desirable that the proceedings should not be protracted any longer than necessary. The mayor will doubtless be guided to a considerable extent as to the number of officers to be appointed by the number of candidates nominated and the vigour with which the election has been carried on.

Where there is only one vacancy to be filled, it is not necessary to enumerate the votes given for each candidate on counting sheets. The papers should be placed in heaps or batches for each candidate, and simply counted.

In an ordinary November election in a borough divided into wards, where two candidates are required and four are nominated, if the candidates are put forward in pairs,

the counting of the votes would be comparatively easy, and doubtless two persons could count 500 ballot papers in an hour. The time occupied would, however, be very much more if each candidate stood on his own merits, and the votes were split amongst the candidates in various ways. In such a case it would be necessary to enumerate each vote in the following method: Duties of returning officer.

The rooms in which the ballot papers are to be counted should be of ample size to accommodate the counting officers and agents and the candidates without any overcrowding.

Tables should be placed in convenient positions in the room, and sufficient space should be allowed between the tables to pass and repass.

The tables should be supplied with pens, ink, and blotting-paper.

The counting officers should work in pairs, and should be placed at the separate tables side by side. Each pair of counting officers should sit at a distance of six feet at the least from any other pair, so that they may not interrupt each other's proceedings. The counting officers being seated at the tables, the returning officer, or his assistant, should give to one in each pair of officers a number of ballot papers;—a counting or enumerating sheet, and two ordinary files should be supplied. One file should have attached to it a card with the word "disputed" printed thereon.

One officer should then take the ballot papers, one by one, and call over the names of the candidates for whom the votes are marked, and the other officer should record the votes on the counting sheet. As soon as a ballot paper has been thus dealt with, the officer will put it face upwards on the file for undisputed ballot papers.

In case the officer comes to a ballot paper—

(1.) Not marked with the official mark; or

(2.) Upon which more votes are given than a voter is entitled to give; or

(3.) Upon which is any writing or mark by which the voter could be identified; or

Duties of returning officer.

(4.) Which is unmarked, or is uncertain as to the persons for whom the votes are given,

He should put such ballot paper on the file marked "disputed."

If any agent object to a ballot paper the officer should put it on the file for disputed ballot papers, for the decision of the returning officer.

The returning officer should not upon any pretence whatever allow a candidate or any agent to meddle with the ballot papers or interfere with the counting officers in their duties.

The returning officer should have one officer personally attending on him during the counting. Such officer should have charge of the box containing the whole of the ballot papers, and should see that no person other than the returning officer takes any ballot papers therefrom. He should also have the custody of the counting or enumerating sheets. The counting or enumerating sheets should be numbered consecutively, and the greatest care should be taken that all sheets issued are returned. He should be provided with a register in which should be recorded the name of every person entrusted with a counting sheet, and the number of such sheet. As often as the counting or enumeration sheets are filled and cast up, the counting officer should take the same to the returning officer's assistant, who will receive the same and mark them off in the register as returned, and give out other sheets in their stead, recording the same in the register as before mentioned.

When the counting officer's file is full, or when the votes on his ballot papers are all counted, they (with the exception of the disputed ballot papers) should be delivered to the returning officer's assistant, who should place them in a box separate from the ballot papers which have not been enumerated.

The counting officers should retain the disputed ballot papers until the whole of the undisputed votes have been counted. The officers who have cast the sheets should

verify the casting by signing their names at the foot thereof. The casting should be checked by an independent clerk, who should also sign his name at the foot of the counting or enumerating sheet. If an error is detected in casting the sheet, it should be at once taken to the returning officer, who should make such corrections as may be necessary, and place his initials against the alteration. Duties of returning officer.

The returning officer's assistant should be provided with a sheet in the same form as the enumerating sheets, with a colum on the left hand side in which should be written consecutive numbers. This sheet should be called the "summary of votes recorded." As each counting or enumerating sheet is returned to the returning officer's assistant he should enter on the summary (on the line corresponding in number with the counting or enumerating sheet) the total number of votes recorded for each candidate appearing on each enumerating sheet, and so on until the whole have been recorded. As the totals of each enumerating sheet are transferred to the summary the enumerating sheets should be signed by the returning officer's assistant and then filed. The returning officer should then examine the entries made on the "summary" by his assistant, so as to ascertain that the totals of the several enumerating sheets have been correctly transferred to the summary, and should sign the same accordingly.

3. *The Duties of the Returning Officer as to the Rejection of Invalid Ballot Papers.*

This is a subject with respect to which much is left to the judgment and discretion of the returning officer. Some diversity in practice will necessarily follow, and a returning officer will probably find it desirable, as tending to save himself from interruption in his duties, if he declares, before he begins to examine the ballot papers which have been set aside for his decision, substantially what principle he intends to follow in allowing and disallowing votes.

Duties of returning officer.

The provisions of the Ballot Act, 1872, relating to this subject are as follows:—

By sect. 2 any ballot paper which *does not bear on its back the official mark*, or on which anything except the prescribed number on the back is written or marked by which the voter can be identified, shall be void and not counted.

By sect. 62 (3), which enacts that if the election of elective auditors and that of revising assessors are held at the same time, one voting paper only shall be used by any person voting, the names of the candidates for the respective offices being therein separate and distinguished, so as to show the office for which each is a candidate, it is provided that in counting the votes every such ballot paper shall be deemed to be a separate ballot paper in respect of each office, and that any objections thereto shall be considered and dealt with accordingly.

By Rule 36 of the Ballot Act, 1872, as varied by Rule 64, and The Municipal Corporations Act, 1882, the returning officer is to report to the town clerk the number of ballot papers rejected and not counted by him under the several heads of—

(1.) Want of official mark.
(2.) Voting for more candidates than entitled to.
(3.) Writing or mark by which voter could be identified.
(4.) Unmarked or void for uncertainty.

(1.) As to the want of the official mark.

If the presiding officers and their assistants do their duty no question will arise for the returning officer under this head. If, however, any ballot papers should be found to lack the official mark, the returning officer will have no alternative but to reject them.

(2.) Voting for more candidates than entitled to.

Ballot papers disqualified under this head are for the most part obviously bad upon the face of them. It

sometimes happens, however, that an ill-informed voter who has made a mistake in marking his votes, instead of obtaining another ballot paper seeks by some means to obliterate his error and afterwards marks his votes correctly. The returning officer must determine whether any additional marks are merely cancellations of mistakes which in his discretion need not invalidate the ballot paper, or are such marks as would come under the next head, viz.:— Duties of returning officer.

(3.) Writing or mark by which voter could be identified.

Before taking this disqualification into particular consideration it is necessary to refer to the following direction contained in the "form of directions for the guidance of the voter in voting" contained in the Second Schedule to the Ballot Act, namely,—

"The voter will go into one of the compartments and, with the pencil provided in the compartment, place a cross on the right hand side opposite the name of each candidate for whom he votes, thus X."

Sect. 28 of the Ballot Act, 1872, enacts that the schedules to this Act and the notes thereto and directions therein shall be construed and have effect as part of the Act.

The Act itself contains no provision as to how, when, or where the voter is to mark his vote, but merely provides that the voter having secretly marked his vote on the paper and folded it up, so as to conceal his vote, shall place the ballot paper in the ballot box.

Rule 25 (in the First Schedule) prescribes the when and where, but is equally silent as to the manner in which the voter is to mark his vote. It provides that "the elector on receiving the ballot paper shall forthwith proceed into one of the compartments in the polling station and there mark his paper, and fold it up so as to conceal his vote, and shall then put his paper so folded up into the ballot box."

These provisions are supplemented by the directions for the guidance of voters which supply the following particulars as to the mode of marking the vote.

Duties of returning officer.

(*a.*) The vote is to be marked with the pencil provided in the marking compartment.

(*b.*) The mark to be made by the voter is to be a cross.

(*c.*) Such mark is to be made on the right hand side opposite the name of the candidate voted for.

In a recent decision the Court of Common Pleas decided that the rules in the First Schedule, and the forms in the Second Schedule, to the Ballot Act, are directory only. (*Woodward* v. *Sarsons and Sadler*, 32 L. T. R. (N.S.) C. P. 867.)

It is clear, however, that if any such marking amounts to a mark by which the voter could be identified the vote will be bad.

It is equally clear that if such marking does not amount to a mark by which the voter could be identified the vote will be good, for there is no other prescribed ground on which to reject it.

The question will then arise in each case whether any particular departure from the mode of marking indicated by the directions amounts to "writing or mark by which the voter could be identified."

The identification of a voter for lawful purposes is provided for by his number on the register being written upon the counterfoil of his ballot paper, and the ballot papers and the counterfoil being numbered alike. For the improper identification of a number of voters by the agent of a candidate attending the counting of the votes it would be possible to provide by some pre-arrangement for a peculiar marking of their votes. Thus, if some person bribes ten voters to vote for A. B., and makes it a condition of their receiving their bribes that the agents on behalf of A. B. present at the counting shall observe that ten of the votes given for A. B. are marked with some pencil different from those provided, or with some mark other than a cross, or with a mark made otherwise than on the right hand side, an evasion of the intention of the law is effected, and such marking of the votes is to some extent a mark by which a voter could be identified.

The returning officer must determine whether the

divergencies from the prescribed mode of marking the ballot papers brought under his notice afford, when taken as a whole, any evidence of collusion for the purpose of an improper identification. Duties of returning officers.

It would be difficult for the returning officer to obtain proof that irregularities in marking ballot papers are the result of collusion for the purpose of identification, although his suspicions may be aroused by a series of similar irregularities. If he is of opinion that they do he may reject such papers as he deems to afford evidence thereof. If, however, he is of opinion that the irregularities in marking are innocent and result only from want of knowledge or inadvertence he will doubtless endeavour, so so far as he can, to give effect to what appears to be the intention of the voters.

In the case of *Woodward* v. *Sarsons and Sadler*, cited above, the following points were decided:—

That a ballot paper is not vitiated by not having a cross placed thereon in strict conformity with the directions in the schedule to the Ballot Act, so long as there is some mark that clearly shows for whom the voter intended to vote and by which he cannot be identified.

That placing more crosses than one opposite a candidate's name, or placing the cross on a candidate's name, or on the left hand side thereof, will not invalidate the ballot paper.

But that if such departure from the prescribed method of marking the ballot paper should have been made with a view to identify the voter, then the papers, upon proof being given, should be rejected by the returning officer.

That the writing of the candidate or the voter's name would render the ballot paper void.

It is suggested that this decision allows the utmost latitude which should be conceded to voters in marking their ballot papers.

Duties of returning officers.

In the above case of *Woodward* v. *Sarsons and Sadler* the following were allowed as good ballot papers :—

Specimens of ballot papers held to be good.

928.

1	SARSONS.	×	×
2	WOODWARD.		"

Had evidently been marked with a × in ink, and folded up, thereby making a corresponding mark on the other part of the paper.

155.

1 ×	SARSONS.	
2	WOODWARD.	

With a cross placed on the left hand, instead of on the right hand side of the candidate's name.

1364.

1	SARSONS. ×	×
2	WOODWARD.	

Had evidently been marked with a × in ink and folded up, thereby making a corresponding mark on the other part of the paper.

117.

× 1	SARSONS.	
2	WOODWARD.	

With a cross placed on the left hand instead of on the right hand side of the candidate's name.

Specimens of ballot papers held to be good.

190.

1 ×	SARSONS.	
2	WOODWARD.	

With a cross placed on the left hand instead of on the right hand side of the candidate's name.

505.

× 1	SARSONS.	
2	WOODWARD.	

With a cross placed on the left hand instead of on the right hand side of the candidate's name.

433.

1	SARSONS.	× ×
2	WOODWARD.	

Marked with two crosses instead of one.

2140.

1	SARSONS.	× |
2	WOODWARD.	

Marked with a straight stroke, in addition to the cross.

875.

1	SARSONS.	|
2	WOODWARD.	

Marked with a straight line instead of a cross.

Specimens of ballot papers held to be good.

911.

1	SARSONS.	×
2	~~WOODWARD.~~	

Having the name of Woodward nearly struck out in pencil.

926.

1	SARSONS.	×
2	WOODWARD.	

On 926 a × in pencil had evidently been rubbed with a damp finger.

1726.

1	× × SARSONS.	×
2	WOODWARD.	

Marked with three crosses instead of one.

3562.

1	SARSONS.	× P
2	WOODWARD.	

Marked with the letter P in addition to the cross.

1290.

1	SARSONS.	
2	WOODWARD.	× ×

Marked with two crosses instead of one.

Specimens of ballot papers held to be good.

641.

1	SARSONS.	*
2	WOODWARD.	

Marked with a star instead of a cross.

1374.

1	SARSONS.	
2	WOODWARD.	×

This paper was torn through the middle where indicated by the dotted line.

174.

1	× SARSONS.	
2	WOODWARD.	

With a cross placed on the left hand instead of on the right hand side of the candidate's name.

2592.

1	SARSONS.	
× 2	WOODWARD.	

With a cross placed on the left hand instead of on the right hand side of the candidate's name.

In the same case the following were rejected as bad ballot papers:—

Specimens of ballot papers held to be bad.

844.

1	SARSONS.	Sarsons.
2	WOODWARD.	

Bearing the name of one of the candidates.

Specimens of ballot papers held to be bad.

638.

1	SARSONS.	×
2	WOODWARD.	

E. Prews.

This ballot paper bore the name of the voter, E. Prews, which was found on the Burgess Roll.

889.

1	SARSONS.	Sarsons.
2	WOODWARD.	

Bearing the name of one of the candidates.

410.

1	SARSONS.	
2	WOODWARD.	C. A. ×

Marked with initials which might identify the voter.

In the case of *McLaren* v. *Milne Home* (the Berwick Parliamentary Election), 44 L. T. R. (N.S.) 289, the following points as to the marking of ballot papers were decided:—

A ballot paper may be well marked, although the mark does not discolour the paper, or appear to have been made with a pencil, if from any circumstances the court can infer that the marks were intentionally made.

A ballot paper may be well marked for one candidate, although a great portion of the cross is opposite the name of another candidate, if the point of intersection of the crossing lines is opposite the name of the former.

A ballot paper marked only with a cross on the back of the paper is bad.

When the marked register shows that a voter has already voted, it is *primâ facie* sufficient for adding his subsequently

tendered vote to the poll, that he swears he did not previously vote, and that the marked register is wrong. Duties of returning officers.

When the marked register shows that a voter did not vote, it is not conclusive on a scrutiny, but it may be proved that the voter did vote, and his vote, on a paper bearing the number of another elector, will be valid.

There are also decisions to justify the rejection of a ballot paper which has two parallel strokes drawn on the back of the paper. (*Wigton*, 2 O'M. & H. 215.) Also of a ballot paper which has upon it an ink mark of uncertain character on the bottom of the paper below the petitioner's name.

The court was divided as to the paper last named, the junior judge holding that it might be counted, but the senior judge holding that it was void for uncertainty, and that the marks or blot might have been made accidentally. Consequently, the vote was not counted.

And there are decisions sanctioning the counting of a ballot paper—

In which the cross X is placed on the right hand side of the paper, but on the left of the vertical line delineated thereon. (*Athlone*, 2 O'M. & H. 186.)

In which the cross is placed above or below the name, provided it be so placed as to leave no doubt as to the candidate for whom the vote was intended. (*Wigton Case*, 2 O'M. & H. 214.)

In which the cross is marked with ink or other substance, instead of with the materials for the purpose supplied by the mayor. (*Wigton Case, ib.*)

(4.) As to ballot papers rejected as unmarked or void for uncertainty.

These present little or no difficulty. Few papers will be found wholly unmarked. Some of those that appear at first sight to be unmarked may probably be found marked on the back. Some will have marks placed so equally between the names of the candidates as to make it impossible to tell for whom the vote was intended to be given. These must be rejected. If the point of the intersection of the lines forming the cross is clearly oppo-

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site the name of a candidate, the vote must be counted for such candidate, although some portion of the cross may be in the square appropriated to another candidate. (*McLaren* v. *Milne Home*, 44 L. T. (N.S.) 289.) If the ballot paper is certain as to some, these votes will be counted, although it is uncertain as to others.

4*th. The Returning Officer's Duties as to the Declaration of the Poll.*

When the returning officer has gone through all the ballot papers, and has finished the enumeration of the votes, he is required, as soon as possible, to give public notice of the names of the candidates elected, and, in the case of a contested election, of the total number of votes given for each candidate, whether elected or not. (Rule 45, Ballot Act, 1872.)

The following form may be used:—

Borough of N.

Election of councillors for ward in the said borough [*or* for the said borough].

I, the undersigned, , the returning officer at the election of councillors for the said borough, by the burgesses of ward [*or* of the said borough] held day of 18 , do hereby publish that the number of votes recorded for each candidate at the said election is as follows:—

Names of Candidates.	Number of Votes recorded.
A. B. C. D. E. F. G. H. I. J.	

And I do hereby declare that the said and are duly elected councillors of the said borough.

Dated this day of 18 .

Alderman (*or* Mayor), Returning Officer.

The returning officer will then see that the counted and rejected ballot papers are sealed up, pursuant to the 37th

rule of the Ballot Act, 1872, and that all such papers, and the other sealed packets, boxes, and things are placed in the custody of the town clerk. Duties of returning officers.

Notice to Persons Elected.

The town clerk should immediately give notice to the persons elected. Notice to persons elected.

Such notice may be in the following form:—

Municipal Offices,
N.,
day of 18 .

Sir,

Notice is hereby given to you that you have been elected a councillor for this borough.

The Municipal Corporations Act, 1882, directs that within five days after notice of your election you shall, unless you are exempt by law, accept the office by making and subscribing the declaration required by that Act, or shall in lieu thereof be liable to pay to the council a fine for non-acceptance of such office.

I shall attend with the official form of declaration at these offices on at o'clock in the noon, when, if you please, you may qualify.

You cannot legally act until you have made and subscribed such declaration.

I am, Sir,
Your obedient servant,
A.B.,
Town Clerk.

This notice should be served personally on the candidate. Casual information of an election is not sufficient. The candidate must have regular notice of his own election, either by being actually present when it is announced officially, or by being apprized thereof by some official authority. (Per Lord Denman, C. J., in *R.* v. *Preece*, 5 Q. B. 94; 12 L. J. Q. B. 335; and *ante*, note on sect. 225.)

If the candidate is from home, the notice should be left at his residence, and the town clerk must ascertain if the candidate, on his return, has received it. As non-acceptance of office by a person elected creates a vacancy, it is necessary to have direct evidence of the fact of the notice having come to the candidate's knowledge.

Election of Auditors and Assessors.

Election of auditors and assessors.

Sect. 62 enacts that the ordinary day of election of elective auditors shall be the 1st of March, or such other day as the council, with the approval of the Local Government Board, from time to time appoint.

The ordinary day of election of revising assessors is the 1st of March.

If the election of elective auditors and that of revising assessors are held at the same time, then, at the poll, one voting paper only is to be used by any person voting.

The names of the candidates for the respective offices are to be therein separate, and distinguished so as to show the office for which each is a candidate, and the provisions of the Ballot Act, 1872, must be varied accordingly; but in the counting of the votes every voting paper is to be deemed to be a separate voting paper in respect of each office, and any objections thereto must be considered and dealt with accordingly.

An elector may not vote for more than one person to be elective auditor or revising assessor.

Elections of elective auditors and of revising assessors must be held at the town hall or some one other convenient place appointed by the mayor.

Save as provided by sect. 62, all the provisions of the Municipal Corporations Act, with respect to the nomination and election of councillors for a borough not having wards, apply to the nomination and election of elective auditors and revising assessors.

Signature.

Signature.

In some boroughs a practice has grown up of allowing nomination papers to be signed with the name of the burgess by an agent, often a member of the family.

It seems clear that the law requires personal signature in such a case. The Municipal Corporations Act, 1882, Third Schedule, Part II., 2, provides that the nomination

paper must be *subscribed by the burgess.* The burgess cannot delegate this duty. In the case of *Hyde* v. *Johnson* (2 Bing. N. C. 776; S. C. 5 L. J. R. (N.S.) C. P. 291), which arose upon sect. 1, 9 Geo. 4, c. 14, it was *held* that a letter written by the wife of the party to be charged, signed with his name, at his request, is not sufficient to take the case out of the statute. The statute requires the signature of the party to be charged. Signature.

In the case of *Toms* v. *Cuming,* 8 Scot. N. R. 910; 7 M. & G. 88; 14 L. J. C. P. (N.S.) 67, which arose on the 17th section of 6 & 7 Vict. c. 18, it was *held* that a notice of objection must be signed by the person objecting and not by his agent.

Where the name of an objector was affixed to the notice by himself by means of a stamp upon which was engraved his ordinary signature, it was *held,* on appeal, confirming the decision of the revising barrister, that the name so affixed was a good signature within the 17th section of 6 Vict. c. 18. (*Bennett* v. *Brumfitt,* L. R. 3 C. P. 28.)

APPENDIX.

ENACTMENTS INCORPORATED BY THE MUNICIPAL CORPORATIONS ACT, 1882.

1. ENACTMENTS RELATING TO REGISTRATION.

6 VICT. CAP. 18.

PARLIAMENTARY REGISTRATION ACT, 1843.

(This Statute does not relate to any Boroughs which are solely Municipal.)

An Act to amend the Law for the Registration of Persons entitled to vote, and to define certain Rights of voting, and to regulate certain Proceedings in the Election of Members to serve in Parliament for England and Wales.

[31st May, 1843.]

WHEREAS an Act was passed in the second year of the reign of His late Majesty, intituled "An Act to amend the Representation of the People in England and Wales:" and whereas it is expedient to explain and amend some parts of the said Act, and to make further and other provisions relating to the registration of persons entitled to vote in the election of members to serve in parliament for England and Wales: and whereas it is recited in the said Act, "it was expedient to form a register of all persons entitled to vote in the election of a knight or knights of the shire to serve in any future parliament;" and divers clauses and provisions were in and by the said Act enacted, for the purpose of forming a register of all persons entitled to vote in

3 & 4 Will. 4, c. 45.

the election of a knight or knights of the shire to serve in any future parliament for any county, or for the riding, parts, or division of any county, and also for the purpose of forming a register of persons entitled to vote in the election of a member or members to serve in any future parliament for any city or borough, and for the defraying of the expenses to be incurred thereby, and for the appointment and payment of revising barristers: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the said clauses and provisions of the said Act so enacted for the purpose of forming a register of all persons entitled to vote in the election of a knight or knights of the shire to serve in parliament for any county, or for the riding, parts, or division of any county, and for the purpose of forming a register of all persons entitled to vote in the election of a member or members to serve in parliament for any city or borough in England and Wales, and for the defraying of the expenses to be incurred thereby, and for the appointment and payment of revising barristers, shall be and the same are hereby repealed, except as to any register heretofore made.

Certain provisions of recited Act repealed.

2. And be it enacted, that this Act shall come into force on the first day of June next, and shall thenceforth be taken to be part of the said Act as fully as if it were incorporated therewith.

Commencement of Act.

* * * * *

10. And for the purpose of preparing like lists, and forming a register of all persons entitled to vote in the election of a member or members to serve in parliament for any city or borough, be it enacted, that the town clerk of every such city or borough shall cause a sufficient number of forms of precepts, notices, and lists to be printed according to the forms numbered (1, 2, 3, 4, 8, 12,) in the Schedule (B.), and of the table numbered (1) in the Schedule (D.) to this Act annexed, and shall on or before the tenth day of June in every year make, and cause to be delivered to the overseers of the poor of every parish or township situate wholly or in part within such city or borough, or within any place sharing in the election of such city or borough, his precept according to the form numbered (1) in the

Town clerk to have forms of precepts, &c., printed.

To issue his precept to the overseers.

Appendix. Sect. 10.

said Schedule (B.), and also a sufficient number of the said printed forms of notices and lists, and of the said table.

Sects. 3 to 9 refer only to preparing lists, &c., for counties. None of the forms given in this Act for boroughs are to be now used, with the exception of a few respecting freemen. The forms in the schedule to the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), are to be substituted for them.

Overseers to give public notice as to the payment of rates and taxes by occupiers of premises of the yearly value of £10.

11. And be it enacted, that the overseers of every such parish or township shall, on or before the twentieth day of June in every year, publish a notice in writing according to form numbered (2) in the said Schedule (B.), stating that no person will be entitled to have his name inserted in any list of voters for the city or borough then next to be made in respect of the occupation of premises of the clear yearly value of not less than ten pounds, situate wholly or in part within such parish or township, unless he shall pay, on or before the twentieth day of July then next ensuing, all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises during the twelve calendar months next before the sixth day of April then last past.

All notices and lists are now to be published as directed by the Act of 1878 (41 & 42 Vict. c. 26), sect. 9, in addition to the manner directed by this Act by sects. 23 and 24. By sect. 10 of the Act of 1878 (41 & 42 Vict. c. 26), the provision as to payment of rates is extended to the payment of all rates which are required to be paid as a condition of enrolment on the burgess roll. By the 9th section of the Municipal Corporations Act, 1882, the condition for enrolment, as regards the payment of rates, is the payment on or before the 20th July of all poor rates and borough rates payable in respect of the qualifying property up to the then last preceding 5th January. The 5th January is, therefore, substituted for the 6th April.

Overseers to have power of inspecting tax assessments, &c.

12. And be it enacted, that the overseers of every parish or township, for their assistance in making out the list of voters as hereinafter mentioned (upon request made by them, or any of them, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, during the month of July in every year, to any assessor or collector of taxes, or to any other officer having the custody of any tax assessment or duplicate for such parish or township), shall have free liberty to inspect any such tax assessment or duplicate, and to extract such particulars as may appear to such overseer or overseers to be necessary; and every such assessor or collector of taxes shall, within two days after the twentieth day of July in every year, make out and deliver to the

said overseers a list containing the name, and place of abode of every person who shall not have paid on or before the said twentieth day of July the assessed taxes which shall have become payable from him in respect of any premises within the said parish or township during the twelve calendar months next before the sixth day of April then last past; and the overseers shall keep the said list, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days after the list of voters shall have been published, as hereinafter mentioned.

Assessors or collectors of taxes to deliver to overseers a list of persons in arrear of taxes payable at April last past.

The 5th January is now substituted for the 6th April; *see* note on sect. 11.

13. And be it enacted, that the overseers of every such parish or township shall, on or before the last day of July in every year, make out, or cause to be made out, according to the form numbered (3) in the Schedule (B.) to this Act annexed, an alphabetical list of all persons who may be entitled to vote in the election of a member or members to serve in parliament for such city or borough in respect of the occupation of premises of the clear yearly value of not less than ten pounds, situate wholly or in part within such parish or township, and another alphabetical list, according to the form numbered (4) in the said Schedule (B.) of all other persons (except freemen) who may be entitled to vote in the election of such city or borough by virtue of any other right whatsoever, and in each of the said lists the Christian name and surname of every such person shall be written at full length, together with the place of his abode and the nature of his qualification, and where any person shall be entitled to vote in respect of any property, then the name of the street, lane, and the number of the house (if any), or other description of the place where such property may be situate, shall be specified in the list; and the said overseers shall sign such lists, and shall forthwith cause a sufficient number of copies of each of the said lists to be written or printed, and shall publish copies of the said lists on or before the first day of August in such year, and shall likewise keep a copy of each of the said lists, to be perused by any person without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except

Overseers to prepare and publish lists of persons (other than freemen) entitled to vote.

Copies of lists to be kept for inspection and sale.

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Sunday, during the first fourteen days after such lists shall have been so published, and shall deliver copies thereof to all persons applying for the same, on payment of a price for each copy after the rate contained in the table numbered (1), in the Schedule (D.) to this Act annexed.

The lists are to be made out as directed by the Act of 1878 (41 & 42 Vict. c. 26). When so made out, they are to be signed and otherwise dealt with as directed by this section. (*See* sub-sect. 4, sect. 15, and sect. 22 of the same Act.)

Town clerks to prepare and publish the lists of freemen.

14. And be it enacted, that the town clerk of every city or borough shall, on or before the last day of July in the present and in each succeeding year, make out, according to the form numbered (5) in the said Schedule (B.), an alphabetical list of all the freemen of such city or borough who may be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough, together with the respective places of their abode, and shall sign such list, and cause copies thereof to be written or printed, and shall publish the said list on or before the first day of August in such year, and shall likewise keep a copy thereof, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days after such lists shall have been published, and shall deliver copies thereof to all persons applying for the same, on payment of a price for each copy after the rate contained in the Table numbered (1) in the Schedule (D.) to this Act annexed.

See sect. 86 of the Act of 1878 (41 & 42 Vict. c. 26).

Persons omitted from the borough lists to give notice of their claims.

15. And be it enacted, that every person whose name shall have been omitted in any such list of voters for any city or borough so to be made out as aforesaid, and who shall claim, as having been entitled on the last day of July then next preceding, to have his name inserted therein, and every person desirous of being registered for a different qualification than that for which his name appears in the said list, shall, on or before the twenty-fifth day of August in that year, give or cause to be given a notice, according to the form numbered (6) in the said Schedule (B.), or to the like effect, to the overseers of that parish or township in the list whereof he shall claim to have his name inserted,

or if he shall claim as a freeman of any city or borough, or place sharing in the election therewith, then he shall in like manner give or cause to be given to the town clerk of such city, borough, or place, a notice according to the form numbered (7) in the said Schedule (B.), or to the like effect; and the overseers and town clerks respectively shall include the names of all persons so claiming as aforesaid in lists, according to the forms numbered (8) and (9) respectively in the said Schedule (B.)

Lists of claimants to be made.

The 15th day of July is now substituted for the last day of July by sect. 7 of the Act of 1878. None of the forms given in this Act for boroughs are to be used, with the exception of a few respecting freemen. (41 & 42 Vict. c. 26, sect. 8.) The 24th section of the Act of 1878 provides a method for correcting a mistake as to the name or place of abode, or the nature of the qualification, or the name or situation of the qualifying property, or of any other error or omission in any burgess list. (*See* also Rule 19 of Part II., Third Schedule, Municipal Corporations Act, 1882, as to the power of the Court to correct such mistakes.)

16. And be it enacted, that it shall be lawful for any person whose name shall be on any list of voters for the time being for any city or borough, or for any person who shall have claimed to have his name inserted in any such list, upon request made by such person, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, between the tenth day of August and the last day of August, to any overseer or other officer having the custody of any poor rate book, to inspect such poor rate book, and make extracts therefrom for any purpose relating to any claim or objection made or intended to be made by or against such persons; and every such overseer or other officer as aforesaid is hereby required upon such request as aforesaid, to permit such inspection, and the making of such extracts, without payment of any fee.

Registered electors and claimants may inspect rate books.

A person enrolled as a burgess has greatly extended powers of inspection of poor rate books under the 13th section of the Act of 1878. (41 & 42 Vict. c. 26.)

17. And be it enacted, that every person whose name shall have been inserted in any list of voters for any city or borough may object to any other person as not having been entitled on the last day of July next preceding to have his name inserted in any list of voters for the same city or borough; and every person so objecting shall, on or before the twenty-fifth day of August in that year, give or cause to be given a notice according to the form

Persons named in the list may object to others as not being entitled to be in the list.

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Notice of objection to be given to the overseers, or to the town clerk;

and also to the person objected to.

numbered (10) in the said Schedule (B.) or to the like effect, to the overseers who shall have made out the list in which the name of the person so objected to shall have been inserted, or if the person objected to shall have been inserted in the list of freemen of any city or borough, except the city of London, then to the town clerk of such city or borough; and every person so objecting shall also give or cause to be left at the place of abode of the person objected to, as stated in the said list, a notice according to the form numbered (11) in the said Schedule (B.); and every notice of objection shall be signed by the person objecting.

The 15th day of July has been substituted for the last day of July (41 & 42 Vict. c. 26, s. 7). None of the forms given in this Act for boroughs are to be used, with the exception of a few respecting freemen (41 & 42 Vict. c. 26, s. 8).

An objector may affix his name to the notice of objection by means of a stamp on which is engraved a fac-simile of his ordinary signature. He could not, however, authorise such a stamp to be affixed by another acting on his behalf (*Bennet* v. *Brumfitt*, L. R. 3 C. P. 28).

It is a question of fact for the revising barrister whether the description of the place of abode of the objector in a notice of objection is sufficient. Where the description is such that a letter so addressed would reach the objector by post, and the person objected to could easily find him by enquiry on going to the place stated, it is sufficient (*Thackway* v. *Pilcher*, L. R. 2 C. P. 100). The Parliamentary borough of P. consists of six several places, one of such places being called the borough of P.; the objector being on the list for that place described himself in the notice of objection as "on the list of voters for the borough of P." It was *held* that the notice was sufficient (*Moon* v. *Andrew*, L. R. 4 C. P. 461). (*See* also *Aldridge* v. *Medwin*, L. R. 4 C. P. 464; *Allen* v. *Geddes*, L. R. 5 C. P. 291.)

Notice of objection is bad where the objector was described as "on the list of voters for the parish of P.;" his name was not on the list of occupiers for that parish, but on the list of freemen (*Tudball* v. *Town Clerk of Bristol*, 5 M. & G. 5, affirmed by *Bright* v. *Devenish*, L. R. 2 C. P. 102.)

List of persons objected to to be made.

Such lists and the lists of claimants to be published.

Copies of lists and notices of objection to be kept for inspection.

18. And be it enacted, that the said overseers shall include the names of all persons so objected to in a list, according to the form numbered (12) in the said Schedule (B.); and every town clerk shall include the names of all persons so objected to as freemen in a list, according to the form numbered (13) in the said Schedule (B.); and the said overseers and town clerks respectively shall sign each of the said lists, and cause copies thereof to be written or printed, and shall publish the said list of persons objected to, and the said list of claimants as aforesaid, on or before the first day of September in the said year; and shall keep copies of the said lists, and shall allow the same, and also the notices of objection which they shall have received, to be perused by any person, without payment of any fee, at any

time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days of September in the said year, and shall deliver copies of each of such lists to any person requiring the same, on payment of a price for each copy after the rate contained in the table numbered (1) in the Schedule (D.) to this Act annexed.

Overseers to deliver copies of lists to the town clerk.

19. And be it enacted, that the said overseers shall, on or before the twenty-ninth day of August in every year, deliver to the said town clerk a copy of the said list of voters, made out by them as aforesaid, and a copy of the said list of persons who shall have claimed as aforesaid, and a copy of the list of persons objected to as aforesaid.

Sects. 20 and 21 are omitted, as they do not relate to borough voters.

Provision as to places having no overseers.

22. And be it enacted, that every precinct or place, whether extra-parochial or otherwise, which shall have no overseers of the poor, shall, for the purpose of making any claim, and making out any list directed by this Act, be deemed to be within the parish or township adjoining thereto and sharing in the right of election to which such claim or list may relate; and if such parish or place shall adjoin two or more parishes or townships situated as aforesaid it shall be deemed to be within the least populous of such parishes or townships, according to the last census for the time being.

What shall be publication of notice.

23. And be it enacted, that every notice, list, register, or other document herein required to be published, shall be so published, except where some other mode or place of publication is herein expressly provided, by being fixed in some public and conspicuous situation on the outside of the outer door or outer wall near the door of the buildings hereinafter named for that purpose; (that is to say) in the case of publication by overseers, every church and public chapel in their parish or township, including places of public worship which do not belong to the Established Church, and in the case of publication by a town clerk, the town hall, or in either case, if there be no such building as is hereinbefore named for that purpose, then in some public and conspicuous situation within the parish or township, city, borough, or place respectively.

These notices are also to be published in the manner directed by the Act of 1878 (41 & 42 Vict. c. 26, s. 9).

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Time for which publication shall be.

24. And be it enacted, that in all cases in which any notice, list, register, or other document shall, pursuant to the provisions aforesaid, be affixed on or near the door of any church, chapel, town hall, or other place, the same shall continue so fixed for a period including two consecutive Sundays at the least next after the day on or before which the same is hereinbefore required to be published; and in case the same shall be destroyed, mutilated, effaced, or removed before the expiration of such period, the party hereinbefore required to publish the same as aforesaid shall, as soon as conveniently may be, publish in like manner in its place another notice, list, register, or other document, to the like purport and effect with the notice, list, register, paper, or document so destroyed, mutilated, effaced, or removed.

Instead of the direction to post another notice "as soon as conveniently may be," the Act of 1878 (41 & 42 Vict. c. 26, Form A.) directs the notice to be posted "forthwith."

Penalty for hindering publication.

25. And be it enacted, that every person who shall wilfully destroy, mutilate, efface, or remove any notice, list, register, or other document so affixed as aforesaid, during the period during which the same is hereinbefore required to remain so affixed, shall for every such offence forfeit any sum not exceeding forty shillings nor less than ten shillings to any person who will sue for the same, to be recovered in a summary manner before any two justices of the peace.

List not invalidated by imperfect publication.

26. And be it enacted, that no list shall be invalidated by reason that it shall not have been affixed in every place and for the full time hereinbefore required for publication thereof, but that the barrister shall proceed to revise and adjudicate upon every such list which shall have been affixed in any place and for any part of the time hereinbefore mentioned in that behalf; but nothing herein contained shall be construed to exempt the overseer, town clerk, or other person charged with the duty of publishing such list as aforesaid from the penalties of his neglect or wilful default.

If no list made out or published, former list to be in force.

27. And be it enacted, that in case no list of voters shall have been made out for any parish, township, or place in any year, or in case such list shall not have been affixed in any place hereinbefore mentioned in that behalf, the register of voters for

that parish, township, or place then in force shall be taken to be the list of voters for that parish, township, or place for the year then next ensuing, and the provisions herein contained respecting any such list of voters shall be taken to apply to such register as aforesaid.

Sects. 28 and 29 are omitted, as they relate to barristers to revise the lists.

Barristers may hold separate courts.

30. And be it enacted, that where two or more barristers shall be appointed for the same county, riding, parts, or division of a county, or for the same city or borough, they may hold separate courts at the same time and place for the despatch of business, or may hold separate courts at different times and places, as shall be deemed most expedient.

Barrister to notify his appointment to clerk of the peace and town clerk, who are to transmit to him abstracts and lists.

31. And be it enacted, that every such revising barrister shall notify his appointment to the clerk of the peace of every county, and to the town clerk of every city and borough of which he shall be appointed to revise the lists; and each clerk of the peace shall as soon as possible transmit an abstract of the number of persons objected to by the overseers and by other persons in each parish and township in and for the same county, and the town clerk of every city or borough shall as soon as possible transmit an abstract of the said several lists of claimants, and the lists of persons objected to, in each parish or township in and for the same city or borough, to the said barrister, in order that proper times and places for holding courts for the revision of such lists respectively may be appointed.

Sect. 32 relates exclusively to counties.

Barristers to hold courts for revising the lists of voters for boroughs, and give notice thereof to the town clerk, who is to publish the same.

33. And be it enacted, that the barrister or barristers appointed to revise the lists of voters for any city or borough shall hold an open court or courts for that purpose within such city or borough, and also within every place sharing in the election for such city or borough, between the fifteenth day of September inclusive and the last day of October inclusive in the then current year, and such barrister or barristers shall, seven days at least before holding any such court or courts, give notice to the town clerk of such city or borough of the time and place of holding the same; and if such barrister shall, in his discretion, deem it expedient to hold his courts at different times and places

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within the said city or borough, the said barrister shall in such case give notice to the said town clerk of such times and places so appointed, and of the parishes allotted to each court; and the town clerk shall forthwith publish a notice of the time and place of the holding of every such court as aforesaid on the town hall, and on every church and chapel within such city or borough, or, if there be no church or chapel or town hall therein, then in some public and conspicuous place therein.

Sect. 18, sub-sect. 2, of the Act of 1878 (41 & 42 Vict. c. 26) substitutes the *twelfth* day of October for the last day of the month for the revision of the burgess lists. In every borough containing at the last census more than 10,000 inhabitants, the revision court is to be held on one evening at the least (36 & 37 Vict. c. 70, s. 4).

Sect. 34 refers to counties only.

Town clerks, overseers, and in London secondaries and clerks of companies, to attend the courts, to produce lists and answer questions, &c.

35. And be it enacted, that the town clerk of every city or borough, and the several overseers for the time being of every parish or township therein, and in the city of London the secondaries and the clerks of the several livery companies of such city, shall attend the first court to be holden before every such barrister for every such city or borough, unless they shall have been respectively required by notice to attend at some other court, in which case they shall attend the said court as required; and the said overseers, town clerks, and secondaries respectively shall, at the opening of the said court, deliver to the said barrister the several lists so made by them respectively as aforesaid, and also the original notices of claim and of objection received by them as aforesaid; and the said overseers shall also produce at the said court all rates made for the relief of the poor of their respective parishes or townships between the sixth day of April in the year then last past and the last day of July in the then present year; and the said town clerks, overseers, secondaries, and clerks respectively shall answer upon oath all such questions as any such barrister may put to them or any of them, and produce all documents, papers, and writings in their possession, custody, or power touching any matter necessary for revising the list of voters; and every such barrister shall have power to require any assessor, collector of taxes, or other officer having the custody of any tax assessment or duplicate, or any overseer or overseers of a past year, or other person having the custody of any poor rate of the then current or any past year, or any relieving officer, and in the city of London the chamberlain or his deputy, to attend before him at any court

Power of barrister to require attendance of overseer of past year, and assessor and collector, &c., of taxes,

to be holden by him in pursuance of this Act, and they shall attend accordingly, and answer upon oath all such questions as such barrister may put to them.

Sect. 35. who shall answer upon oath all questions put to them.

As to the *last* day of July, *see* 7th section of the Act of 1878 (41 & 42 Vict. c. 26).

The claimant to vote need only have paid rates up to the fifth day of January. (*See* note to sect. 17.)

The revising barrister may by summons require any person to attend at his court (41 & 42 Vict. c. 26, s. 36).

Sects. 36 and 37 relate solely to counties.

38. And be it enacted, that the revising barrister shall insert in any list of voters for any city or borough the name of every person omitted who shall be proved to the satisfaction of such barrister to have given due notice of his claim to be inserted in such list, and to have been entitled on the last day of July then next preceding to have his name inserted therein in respect of the qualification described in such notice of claim.

Power of barrister to insert names in lists of borough voters.

The *fifteenth* is substituted for the last day of July by sect. 7 of the Act of 1878 (41 & 42 Vict. c. 26).

39. And be it enacted, that it shall be lawful for any person whose name shall be on any list of voters for any county, city, or borough to oppose the claim of any person so omitted as aforesaid to have his name inserted in any list of voters for the same county, city, or borough; and such person intending to oppose any such claim shall, in the court to be holden as aforesaid for the revision of such list, and before the hearing of the said claim, give notice in writing to the revising barrister of his intention to oppose the said claim, and shall thereupon be admitted to oppose the same, by evidence or otherwise, without any previous or other notice, and shall have the same rights, powers, and liabilities as to costs, appeal, and other matters relating to the hearing and determination of the said claim, as any person who shall have duly objected to the name of any other person being retained on any list of voters, and who shall appear and prove the requisite notices as hereinafter mentioned.

Any person on list of voters may object to claimants.

Sect. 40 is superseded by sect. 27 of 41 & 42 Vict. c. 26.

41. And be it enacted, that every revising barrister holding any court under this Act shall have power to adjourn the same from time to time, and from any one place to any other place within the same county, or within the same city or borough, but so that no such adjourned court shall be holden after the

Power of revising barristers to adjourn their courts, administer oath, &c.

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last day of October in any year; and at every court to be holden as aforesaid by any revising barrister the said barrister shall have power to administer an oath to all persons examined before him, and all parties, whether claiming or objecting or objected to, and all persons whatsoever, may be examined upon oath touching the matters in question; and every person taking any oath or affirmation under this Act, who shall wilfully swear or affirm falsely, shall be deemed guilty of perjury, and at the holding of such respective courts no party or other person shall appear or be attended by counsel; and every such barrister shall upon the hearing in open court finally determine upon the validity of such claims and objections, and shall for that purpose have the same powers and proceed in the same manner (except where otherwise directed by this Act) as the returning officer of any county, city, or borough, according to the laws and usages observed at elections previous to the passing of the said recited Act; and such barrister shall in open court write his initials against the names respectively expunged or inserted, and against any part of the said lists in which any mistake shall have been corrected or any omission supplied or any insertion made by him, and shall sign his name to every page of the several lists so settled.

Persons swearing falsely guilty of perjury.

Barrister in open court to decide upon validity of claims and objections.

The *twelfth* of October is substituted for the last day of October as to the revision of burgess lists (41 & 42 Vict. c. 26, s. 18).

It is the duty of the revising barrister, before signing each page, to read audibly, in open court, the names expunged and inserted by him therein, and all corrections and insertions made by him. (Sect. 15 of 28 & 29 Vict. c. 36.)

Appeal from revising barrister's decision on points of law.

42. And be it enacted, that it shall be lawful for any person who, under the provisions hereinbefore contained, shall have made any claim to have his name inserted in any list, or made any objection to any other person as not entitled to have his name inserted in any list, or whose name shall have been expunged from any list, and who in any such case shall be aggrieved by or dissatisfied with any decision of any revising barrister on any point of law material to the result of such case, either himself or by some person on his behalf, to give to the revising barrister in court, before the rising of the said court, on the same day on which such decision shall have been pronounced, a notice in writing that he is desirous to appeal, and in such notice shall shortly state the decision against which he desires to appeal; and the said barrister thereupon, if he thinks it reason-

Revising barrister to prepare a statement of facts.

able and proper that such appeal should be entertained, shall state in writing the facts which according to his judgment shall have been established by the evidence in the case, and which shall be material to the matter in question, and shall also state in writing his decision upon the whole case, and also his decision upon the point of law in question appealed against; and such statement shall be made as nearly as conveniently may be in like manner as is now usual in stating any special case for the opinion of the court of Queen's Bench upon any decision of any court of quarter sessions; and the said barrister shall read the said statement to the appellant in open court, and shall then and there sign the same; and the said appellant, or some one on his behalf, shall at the end of the said statement make a declaration in writing under his hand to the following effect, that is to say, "I appeal from this decision;" and the said barrister shall then indorse upon every such statement the name of the county and polling district, or city and borough, and of the parish or township to which the same shall relate, and also the Christian name and surname and place of abode of the appellant and of the respondent in the matter of the said appeal, and shall sign and date such indorsement; and the said barrister shall deliver such statement, with such indorsement thereon, to the said appellant, to be by him transmitted to her Majesty's court of Common Pleas at Westminster in the manner hereinafter mentioned; and the said barrister shall also deliver a copy of such statement, with the said indorsement thereon, to the respondent in such appeal who shall require the same.

Appellant to make a declaration in writing.

Revising barrister to indorse on statement the names of parties, &c.; and deliver a copy to either party requiring it.

Now, any person who feels aggrieved by a revising barrister neglecting or refusing to state any case may apply to the High Court of Justice upon affidavit for a rule to show cause why a rule should not be made directing the appeal to be entertained. (Sect. 37 of 41 & 42 Vict. c. 26.)

43. And be it enacted, that in the matter of every such appeal the party in whose favour the decision appealed against shall have been given shall be the respondent; but if there be no such party, or if such party, or some one on his behalf, shall in open court decline, and state in writing that he declines to support the decision appealed against as respondent, then and in every such case it shall be lawful for the said revising barrister to name any person who may be interested in the matter of the said appeal, and who may consent, or the overseers of any parish or township, or the town clerk of any city or borough,

Who shall be respondent on appeal.

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to be, and such person so consenting, or such overseers or town clerk respectively so named, shall be deemed to be the respondent or respondents in such appeal.

Sect. 38 of the Act of 1878 (41 & 42 Vict. c. 26) requires the revising barrister, at the request of the appellant, to name the town clerk as the respondent in the appeal. The costs of the town clerk, and any costs he may be ordered to pay, are to be allowed to him.

Power to consolidate appeals.

44. And be it enacted, that if it shall appear to any revising barrister that the validity of any number of such claims or objections determined by him at any court as aforesaid depends and has been decided by him upon the same point or points of law, and the parties or any of them aggrieved by or dissatisfied with his decision thereon, shall have given notice of an intention to appeal therefrom, it shall in such case be lawful for the said barrister to declare that the appeals against such decision ought to be consolidated, and the said barrister shall in such case state in writing the case, and his decision thereon, in manner hereinbefore mentioned, and that several appeals depend upon the same decision, and ought to be consolidated, and shall read such statement, and sign the same, as hereinbefore mentioned, and thereupon it shall be lawful for the said barrister to name any person interested, and consenting, for and on behalf of himself and all other persons in like manner interested in such appeals, to be the appellant or respondent respectively in such consolidated appeal, and to prosecute or answer the said appeal, in like manner as any appellant or respondent might in his own case under the provisions of this Act, and the person so named appellant in such consolidated appeal, or some one on his behalf, shall, at the end of the said statement, make and sign a declaration in the form or to the effect following; (that is to say,)

"I, for myself and on behalf of all the other persons who are interested as appellants in this matter, and whose names are hereunder written, do appeal against this decision, and agree to prosecute this appeal."

And the person so named respondent in such consolidated appeal, or some one on his behalf, shall in like manner make and sign a declaration in writing in the form or to the effect following; (that is to say,)

"I, for myself and on behalf of all the other persons interested as respondents in this matter, and whose names are hereunder written, do agree to appear and answer this appeal."

And the name, and where necessary, the particulars of the

qualification of every party intended to be joined in such consolidated appeal, shall be written under the aforesaid declaration of the appellant or respondent respectively to which they may respectively refer: provided always, that it shall be lawful for the said barrister, if necessary, in any case to name the overseers of any parish or township, or the town clerk of any city or borough, to be, and they or he so named shall be, the respondents or respondent in such consolidated appeal, without any such declaration being made or signed by them or him as hereinbefore mentioned.

Overseers or town clerk may be named as respondents.

45. And be it enacted, that in and with regard to every such consolidated appeal the like proceeding shall be had and taken and the like rules and regulations shall apply as in the case of any other appeal under this Act; and that every order, judgment, or decision of the said court of Common Pleas shall be equally valid and effectual for all the purposes of this Act, and binding and conclusive upon all the parties named in or referred to as parties to such consolidated appeal as aforesaid; and that if in any case all or any of the parties to such consolidated appeal shall make or enter into any agreement as to the mode of contributing among themselves to the costs and expenses of such appeal, the said agreement may, upon the application of any party or parties thereto, be made a rule of the said court of Common Pleas, if the said court shall think fit; provided always, that if any such consolidated appeal shall not be duly prosecuted or answered, it shall be lawful for the said court of Common Pleas, or for the Lord Chief Justice or any Judge of the said court, to give to any party or parties interested in such appeal, upon his or their application, the conduct and direction of the said appeal, or of the answer thereto respectively, as the case may require, instead of or in addition to any person named as aforesaid as appellant or respondent, and in such manner and upon such terms as the said court or Lord Chief Justice or Judge may think fit and order, or to make such other order in the case as may seem meet: provided also, that if after the said barrister shall as aforesaid have declared that the appeal in any case ought to be with others consolidated, any party interested in such appeal shall object and refuse to be a party to or to be bound by any such consolidated appeal, then and in such case the appeal in which such person is interested may proceed separately, but such person so refusing or objecting shall be

Consolidated appeals to be conducted as any single appeal.

Agreement for contribution to costs of consolidated appeal may be made a rule of court.

If consolidated appeal not duly prosecuted or answered the court or a judge may give conduct of it or of the answer to other persons.

If party interested shall refuse to be a party, &c.

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liable to pay costs to the other party, but shall not be entitled to receive any costs of or in such appeal, unless the said court otherwise order.

Power to barrister to give costs in certain cases to parties claiming or objecting.

46. And be it enacted, that if in any case it shall appear to any revising barrister holding any court as aforesaid that any person shall under this Act have made or attempted to sustain any groundless or frivolous and vexatious claim or objection or title to have any name inserted or retained in any list of voters, it shall be lawful for the said barrister, in his discretion, to make such order as he shall think fit for the payment by such person of the costs or of any part of the costs of any person or persons in resisting such claim or objection or title; and in every such case the said barrister shall make an order in writing, specifying the sum which he shall order to be paid for such costs, and by and to whom and when and where the same sum shall be paid, and shall date and sign the said order, and deliver it to the person or persons to whom the said sum shall therein be ordered to be paid: provided always, that the said sum so ordered to be paid by way of costs shall not in any case exceed the sum of twenty shillings: provided also, that such order for the payment of costs as aforesaid may be made in any case, notwithstanding any party shall have given notice of his intention to appeal against any decision of the revising barrister in the same case; but in case of such appeal the said order for the payment of costs shall be suspended, and shall abide the event of such appeal, unless the court of appeal shall otherwise direct; but no appeal shall be allowed or entertained against or only in respect of any such order for the payment of costs: provided also, that whenever any revising barrister shall have made any such order for the payment of any sum of money for costs by any person who shall have made any objection as aforesaid, it shall not be lawful for the said barrister to hear or admit proof of any other objection or notice of objection made or signed by the same person until the sum of money so ordered to be paid by him for costs be paid to the person entitled to receive the same, or deposited in the hands of the said barrister in court, for the use of the person so entitled.

28 & 29 Vict. c. 36, s. 8, enables the barrister to award costs to the amount of at least 2*s.* 6*d.*

41 & 42 Vict. c. 26, s. 27 (3), enables the barrister to award costs not exceeding forty shillings, to be paid by the objector.

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Sect. 47.

County lists to be transmitted to clerk of the peace, and to be by him copied into a book.

47. And be it enacted, that the said lists of voters for each county, signed as aforesaid, shall be forthwith transmitted by the revising barrister to the clerk of the peace of the same county, and the clerk of the peace shall keep the said lists among the records of the sessions, and shall forthwith cause the said lists to be copied and printed in a book or books, arranged with the names in each parish or township in strict alphabetical order, according to the surnames, and with every polling district in alphabetical order, add with every parish or township within such polling district likewise in the same order, and shall, after the last list for each polling district, insert a list in like alphabetical order of all persons whose names shall not appear in any of the said lists for such polling district, but who shall in manner hereinbefore mentioned have been registered by the revising barrister to vote at the polling place of such last mentioned district, and shall in the said book prefix to every name its proper number, beginning the numbers from the first name, and continuing them in a regular series down to the last name: provided always, that a number as aforesaid shall be prefixed to the name of every person in every such list inserted after the last list for any polling district as aforesaid; and no number, but an asterisk only, shall be prefixed to the name of the same person in the list of the parish or township in which his name originally appeared; and every such book shall be printed and arranged in such manner and form that the list of voters of and for each and every separate parish or township contained therein may be conveniently and completely cut out or detached from all the other lists of voters contained in the same book, so that all the lists for every or any polling place, or the list of every or any single parish or township, may be ready for the purposes of this Act or for sale; and the said clerk of the peace shall sign and deliver the said book or books on or before the last day of November in the then current year to the sheriff of the county, to be by him and his successors in the office of sheriff safely kept, for the purposes hereinafter and in the said recited Act mentioned.

Clerk of the peace to sign and deliver a copy to the sheriff.

An entry of a person not entitled to vote in respect of the qualification therein contained, he being on the list for voters in respect of another qualification, is to be denoted by an asterisk in manner provided by this section.

Note (Q), 41 & 42 Vict. c. 26.

The last day of *December* is now substituted for the last day of *November* by sect. 38 of 30 & 31 Vict. c. 102, s. 38.

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Sect. 48.

Borough lists to be delivered to the town clerks, and copied into a book.

48. And be it enacted, that the lists of voters for each city or borough, signed as aforesaid, shall be forthwith delivered by the revising barrister to the town clerk of the same city or borough; and the said town clerk shall forthwith cause the said lists to be copied and printed in a book: and in the said book the said lists shall be arranged and every name numbered according to the directions aforesaid with regard to the county lists, so far as the same are applicable; and the said town clerk shall sign and deliver the said book on or before the last day of November to the returning officer of the same city or borough, to be by him and his successors as returning officer safely kept for the purposes hereinafter mentioned.

Town clerks to sign and deliver same to returning officers.

This section provides that the lists shall be delivered to the town clerk *forthwith*, whilst the 45th section of 45 & 46 Vict. c. 50 provides for their delivery only after they have been revised and signed.

The lists are to be delivered to the town clerk to enable him to make up the burgess roll by the *twentieth* (and not *twenty-second* as formerly) of October. (45 & 46 Vict. c. 50, s. 45 (2)).

The month of *December* is substituted for the month of November as mentioned in the note to the last preceding section.

Books to be the register of votes for one year.

49. And be it enacted, that the said printed book or books so signed as aforesaid by the clerk of the peace or town clerk respectively, and given into the custody of the sheriff of any county, or the returning officer of any city or borough as the case may be, shall be the register of persons entitled to vote at any election of a member or members to serve in parliament which shall take place in and for the same county, city, or borough respectively, between the last day of November in the year wherein such register shall have been made and the first day of December in the succeeding year: provided always, that the register of electors now in force shall be the register in force until the first day of December in the year one thousand eight hundred and forty-three; and the clerk of the peace of every county, and the town clerk of every city or borough respectively, shall keep printed copies of the said register for such county, city, or borough, and shall deliver such copies of such register, or of any part thereof, to any person applying for the same, upon payment of a price after the rate contained in the Table numbered (2) in the Schedule (D.) to this Act annexed: provided always, that no person shall be entitled to a copy of any part of any register relating to any parish or township without taking or paying for the whole that relates to such parish or township.

Copies of registers to be printed for sale.

Sect. 48 of 45 & 46 Vict. c. 50 provides that the town clerk shall deliver printed copies of the burgess roll to any person on payment of a reasonable price for each copy.

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Note s. 49.

Assessors and other officers neglecting to attend when summoned by revising barrister, liable to be fined.

50. And be it enacted, that any assessor or collector of taxes or other officer, or any overseer or overseers of the poor, or other persons having the custody of any poor-rate book for any past year, or any assistant overseer or relieving officer, who shall wilfully refuse or neglect, when duly required by summons under the hand of any revising barrister, to attend before such barrister at any court to be holden as aforesaid, according to the exigency of such summons, shall, upon proof before him of the service of such summons, be liable to pay by way of fine for every such offence a sum of money not exceeding five pounds nor less than twenty shillings, to be imposed by and at the discretion of the said barrister holding any such court as aforesaid.

Power to barristers to fine overseers for neglect of duty.

51. And be it enacted, that any overseer of any parish or township who shall wilfully refuse or neglect to make out any list, or who shall wilfully neglect to insert therein the name of any person who shall have given due notice of claim, or who in making out the list of voters for any city or borough shall wilfully and without any reasonable cause omit the name of any person duly qualified to be inserted in such list, or who shall wilfully and without reasonable cause insert in such list the name of any person not duly qualified, or who shall wilfully refuse or neglect to publish any notice or list, or copy of the part of the register of voters relating to his parish or township, at the time and in the manner required by this Act, or who shall wilfully refuse or neglect to deliver to the clerk of the peace the copy of the lists of claimants and of persons objected to, and the copies of the register, as required by this Act, or who shall wilfully refuse or neglect to deliver to the town clerk of the city or borough the copies of the several lists as required by this Act, or who shall wilfully refuse or neglect to attend the court for revising the lists of voters of his parish or township, or to attend any revising barrister when required by any summons as aforesaid, or who shall wilfully refuse or neglect to deliver to the barrister or barristers holding any such court the several lists to be made out by them as aforesaid, or who shall be wilfully guilty of any other breach of duty in the execution of this Act,

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shall for every such offence be liable to pay by way of fine a sum of money not exceeding five pounds nor less than twenty shillings, to be imposed by and at the discretion of any barrister holding any court for the revision of any list of the parish or township of such overseer: provided always, that nothing herein contained as to any fine as aforesaid shall affect or abridge any right of action against any overseer or other person liable to any fine as aforesaid, or any liability such overseer or other person may incur under or by virtue of this Act, or the said recited Act.

The provisions of this section are now extended to every wilful refusal, neglect, or breach of duty on the part of overseers. (41 & 42 Vict. c. 26, s. 29.)

Fines, to whom payable, and to what purpose to be applied.

52. And be it enacted, that every revising barrister, when and so often as he shall impose any such fine as aforesaid, shall at the same time in open court, by an order in writing under his hand, stating the sum payable for such fine, direct by and to whom and when the same shall be paid, and the person to whom the said sum shall be so ordered to be paid shall receive the same, and in every case where the offence for which the said fine shall have been so imposed shall relate to the formation of the register of voters for any county he shall pay over the sum so received by him to the clerk of the peace of the same county, and in every case where such offence shall relate to the formation of the register of voters for any city or borough he shall pay over the sum so received by him to the town clerk of the same city or borough, or to the said secondaries, as the case may require.

Any fine imposed by a barrister on the revision of the lists is to be applied in manner mentioned in 30th section of 41 & 42 Vict. c. 26.

Clerk of the peace and town clerk to account for and pay over all monies received by them.

53. And be it enacted, that the clerk of the peace of every county and the town clerk of every city or borough respectively shall keep an account of all monies to be received by him or them for or on account of the sale of any copies of the register as aforesaid, or for or by way of fine imposed as aforesaid; and the said clerk of the peace shall pay over or account for all such monies received by him to the treasurer of the same county, to be applied in aid of the county rate; and the said town clerk shall pay over or account for all such monies so received by them to and amongst the overseers of the several parishes and

townships within every city or borough; and the share of each parish or township shall be calculated as nearly as may be according to the same relative proportion as the number of persons whose names shall appear in the list of the said parish or township shall bear to the number in all the other lists upon the same register, and the said monies together with all monies received by any overseers from the sale by them of any lists, shall be paid and applied by the said overseers in aid of the monies collected for the relief of the poor.

See note to last section as to fines.

In a borough the proceeds of sale go to the borough fund, subject to sect. 30 of 41 & 42 Vict. 26. (45 & 46 Vict. c. 50, s. 48.)

Section 54 applies only to counties.

Expenses of town clerks and returning officers, how to be defrayed.

55. And be it enacted, that all the expenses incurred by any town clerk or returning officer of any city or borough in carrying into effect the provisions of this Act shall be defrayed out of the monies to be collected for the relief of the poor in the several parishes and townships within the same city or borough; and the sum to be contributed by every such parish or township shall be calculated, as nearly as may be, according to the same relative proportion as the number of persons whose names shall appear in the list of the said parish or township shall bear to the number in all the other lists upon the same register; and an account of all the said expenses so incurred, and also an account of the sum to be contributed for defraying the same by each parish or township as aforesaid, shall, as soon as may be after the said expenses shall have been so incurred, be laid before the common council or town council of the said city or borough, or, if there be no such council in any city or borough, then before the justices of the peace at the quarter sessions to be holden in and for the county in which the same city or borough is situate; and the said council or the said justices respectively shall, when they allow the said accounts, make and give to the said town clerk a certificate of the total sum allowed by such council or justices in respect of the said expenses, and also a certificate of the sum to be paid by and as the contribution of each of the said parishes or townships towards defraying the same; and thereupon it shall be lawful for the overseers of every such parish or township, and they are hereby required, out of the first monies to be collected for the relief of the poor, to pay the sum in such certificate mentioned to be paid by and as the contribution of the said parish or township to the said town clerk.

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As to the method in which these expenses are to be defrayed, where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, *see* sect. 30, 41 & 42 Vict. c. 26.

Sect. 56 is omitted, as it applies only to the cities of London and Westminster, and the borough of Southwark.

Expenses of overseers, how to be defrayed.

57. And be it enacted, that an account of all expenses incurred by the overseers of every parish or township in carrying into effect the provisions of this Act shall be laid before the revising barrister at the court at which the list of voters for such parish or township shall be revised; and the said barrister shall sign and give to the said overseers a certificate of the sum which he shall allow to be due to them in respect of the said expenses; and it shall be lawful for the said overseers to receive the sum so certified to be due to them from and out of the first monies thereafter to be collected for the relief of the poor in the same parish or township.

These expenses include those incurred by overseers in pursuance of The Parliamentary Electors Registration Act, 1868, 31 & 32 Vict. c. 58, s. 31; and in pursuance of The Parliamentary and Municipal Registration Act, 1878, 41 & 42 Vict. c. 26, s. 30. The certificate of the barrister must be signed in open court, and any ratepayer may object. (31 & 32 Vict. c. 58, s. 32.)

Sect. 58 is omitted as of no practical importance.

Remuneration of revising barristers.

59. And be it enacted, that every barrister appointed to revise any lists of voters under this Act shall be paid the sum of two hundred guineas, by way of remuneration to him, and in satisfaction of his travelling and other expenses; and every such barrister, after the termination of his last sitting, shall forward his appointment to the Commissioners of Her Majesty's Treasury, who shall make an order for the payment of the above sums to every such barrister, and all such sums shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland: provided always, that in the case of any barrister having been appointed under this Act to revise any lists of voters in addition to the barrister or barristers originally appointed, such barrister, instead of the sums above mentioned, shall be paid at the rate of five guineas for every day that he shall be so employed, together with three guineas each day for his travelling and other expenses; and every such last-mentioned barrister, after the termination of his last sitting, shall lay or cause to be laid before the Commissioners of Her Majesty's Treasury his appointment, and a statement of the number of

days during which he shall have been so employed; and the said commissioners shall make an order for the payment of such sum as shall thereupon appear to be due to every such last-mentioned barrister, and every such sum shall also be paid out of the said Consolidated Fund, but so that no such barrister shall be entitled to or in any case be paid more than the sum of two hundred guineas.

This section relates to the remuneration of the revising barristers, and is partly repealed by 37 & 38 Vict. cc. 53 and 96.

Appeals to be heard by the Court of Common Pleas.

60. And be it enacted, that all appeals or matters of appeal from or in respect of any decision of any revising barrister entertained in manner hereinbefore mentioned shall be prosecuted, heard, and determined in and by her Majesty's Court of Common Pleas at Westminster according to the ordinary rules and practice of that court with respect to special cases, so far as the same may be applicable, and not inconsistent with the provisions of this Act, or in such manner and form, and subject to such rules and regulations, as the said court from time to time, by any rule or order made for regulating the practice and proceedings in such appeals, shall order and direct.

These appeals will now be to the Queen's Bench Division of the High Court.
Sect. 61 is repealed by 37 & 38 Vict. c. 96.

Notice of appeal to be given by appellant.

62. And be it enacted, that every appellant who shall intend to prosecute his appeal shall, within the first four days in the Michaelmas Term next after the decision to which such appeal shall relate, transmit to the masters of the said Court of Common Pleas the statement in writing so signed by the said revising barrister as aforesaid, and shall also therewith give or send a notice, signed by him, stating therein his intention to prosecute the said appeal, and the said appellant shall also give or send a notice, signed by him, to the respondent in the said appeal, stating his said intention duly to prosecute such appeal in the said court; and one of the masters of the said court, to be nominated for that purpose by the Lord Chief Justice of the said court, shall forthwith enter every appeal of which he shall have received due notice from the appellant as aforesaid in a book to be kept by him for that purpose.

Appeals to be entered in a book.

Court to give notice of the time

63. And be it enacted, that the judges of the said Court of Common Pleas shall, as soon as may be after the fourth day of

Appendix. Sect. 63. and place of hearing appeals.

Michaelmas Term in every year, make arrangements for hearing the appeals entered as aforesaid, and shall appoint such certain day or days, either in term time or in time of vacation, as they may think fit and necessary, but as early as conveniently may be, for the purpose of hearing and deciding such appeals; and the said judges shall cause public notice to be given of the time and place so appointed by them for that purpose, and of the order in which such appeals will be heard.

No appeal to be entertained unless notice given.

64. And be it enacted, that no appeal or matter of appeal whatsoever shall, in any case, except where the conduct and direction of the appeal, or of the answer thereto, shall have been given by order of the Court of Common Pleas or of any judge thereof to any person, be entertained or heard by the said court unless notice shall have been given by the appellant to the masters of the said court at the time and in the manner herein-before mentioned; and no appeal shall be heard by the said court in any case where the said respondent shall not appear, unless the said appellant shall prove that due notice of his intention to prosecute such appeal was given or sent to the said respondent ten days at least before the day appointed for the hearing of such appeal: provided always, that if it shall appear to the said court that there has not been reasonable time to give or send such notice in any case, it shall be lawful for the said court to postpone the hearing of the appeal in such case, as to the said court shall seem meet.

No appeal on questions of fact or the admissibility of evidence.

Court may remit case to revising barrister to be more fully stated.

65. And be it enacted, that no appeal or notice of appeal under this Act shall be received or allowed against any decision of any revising barrister upon any question of fact only, or upon the admissibility or effect of any evidence or admission adduced or made in any case to establish any matter of fact only: provided always, that if the said court shall be of opinion in any case that the statement of the matter of the appeal is not sufficient to enable them to give judgment in law, it shall be lawful for the said court to remit the said statement to the revising barrister by whom it shall have been signed, in order that the case may be more fully stated.

Decisions of court to be final.

66. And be it enacted, that every judgment or decision of the said court shall be final and conclusive in the case upon the point of law adjudicated upon, and shall be binding upon every

committee of the House of Commons appointed for the trial of any petition complaining of an undue election or return of any member or members to serve in Parliament. Appendix. Sect. 66.

This means final and conclusive as regards the particular voter in whose case the judgment is actually given. (*Roberts* v. *Percival*, 34 L. J. C. P. 84; 18 C. B. (N.S.) 36; H. & P. 121. See *Hadfield's case*, L. R. 8 C. P. 306; 2 H. & C. 89.)

Decisions of court to be notified to the sheriff or returning officer, and register to be altered conformably.

67. And be it enacted, that whenever by any judgment or order of the said court any decision or order of any revising barrister shall be reversed or altered, so as to require any alteration or correction of the register of voters for any county, or for any city or borough, notice of the said judgment or order of the said court shall be forthwith given by the said court to the sheriff or returning officer, as the case may be, having the custody of such register, and the said notice shall be in writing under the hand of one of the masters of the said court, and shall specify exactly every alteration or correction to be made, in pursuance of the said judgment or order, in the said register; and such sheriff or returning officer respectively shall, upon the receipt of the said notice, alter or correct the said register accordingly, and shall sign his name against every such alteration or correction, in the said register, and shall safely keep and hand over to his successor every such notice received by him from the said court as aforesaid, together with the said register.

Copies of decisions on appeals to be admissible in evidence.

68. And be it enacted, that a copy of any order or decision of the said court, such copy purporting to be signed by one of the masters of the said court, shall be sufficient evidence in all cases, without proof of the signature of the said master, and shall have the like force and effect as any entry made in any list or register of voters under this or the said recited Act.

Sect. 69 relates to parliamentary franchise only.

Court of appeal may give costs.

70. And be it enacted, that it shall be lawful for the said court to make such order respecting the payment of the costs of any appeal, or of any part of such costs, as to the said court shall seem meet: provided always, that it shall not be lawful for the said court in any case to make any order for costs against or in favour of any respondent or person named as respondent as aforesaid, unless he shall appear before the said

Appendix. Sect. 70.

court in support of the decision of the revising barrister in question.

Where the town clerk is respondent, any costs which he may be ordered to pay can be recovered by him in manner mentioned in 38th section, 41 & 42 Vict. c. 26.

Costs and fines to be recovered by distress and sale of the parties' goods.

71. And be it enacted, that in case any sum of money by the order of any revising barrister as aforesaid directed to be paid by any person by way of fine or for costs shall not be paid according to the terms of such order, it shall be lawful for any justice of the peace and he is hereby required, upon proof before him that a true copy of the said order hath been served upon or left at the usual place of abode of the person in the said order directed to pay such sum, and that the said sum hath been demanded of such person, and that he hath refused or neglected to pay the same, by warrant under his hand and seal to order the said sum of money, together with the costs of and attending the said warrant, to be levied by distress and sale of the goods and chattels of such person so making default which may be found within the jurisdiction of the said justice; and the overplus, if any, after the said sum of money and costs, and the charges of such distress and sale, are deducted, shall be returned, upon demand, to the owner of the said goods and chattels: provided always, that no *certiorari* or other writ or process for the removal of any such order or warrant, or of any order or warrant to be made or issued on account of a false charge of personation in the manner herein-after provided, or any proceeding thereon respectively, into any of Her Majesty's courts at Westminster, shall be allowed or granted.

No *certiorari* allowed.

Sect. 72 is repealed by 37 & 38 Vict. c. 96.

Sects. 73 and 74 are omitted, as they do not relate to municipal boroughs.

Right of voting in boroughs by occupiers of houses, &c., of the annual value of £10.

75. And whereas by the said first-recited Act it is enacted, that in every city or borough which shall return a member or members to serve in any future parliament, every male person of full age, and not subject to any legal incapacity, who shall occupy within such city or borough, or within any place sharing in the election for such city or borough, as owner or tenant, any house, warehouse, counting-house, shop, or other building, being either separately or jointly with any land within such city, borough, or place, occupied therewith by him as

owner, or occupied therewith by him as tenant under the same landlord, of the clear yearly value of not less than ten pounds, shall, if duly registered according to the provisions thereinafter contained, be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough; and it is also provided, that no such person shall be so registered in any year unless he shall have occupied such premises as aforesaid for twelve calendar months next previous to the last day of July in such year, nor unless such person, where such premises are situate in any parish or township in which there shall be a rate for the relief of the poor, shall have been rated in respect of such premises to all rates for the relief of the poor in such parish or township made during the time of such his occupation so required as aforesaid, nor unless such person shall have paid on or before the twentieth day of July in such year all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises previously to the sixth day of April then next preceding: and whereas doubts have arisen how far any misnomer or inaccurate or insufficient description in a rate of the person occupying any such premises as in the said recited Act are mentioned, or any inaccurate description of the premises so occupied, has the effect of preventing any such person from being registered and entitled to vote in respect of such premises in any year: be it therefore declared and enacted, that where any person shall have occupied such premises as in the said recited Act are mentioned for twelve calendar months next previous to the last day of July in any year, and such person being the person liable to be rated for such premises shall have been *bonâ fide* called upon to pay in respect of such premises all rates made for the relief of the poor in such parish or township during the time of such his occupation so required as aforesaid, and such person shall have *bonâ fide* paid on or before the twentieth day of July in such year all sums of money which he shall have been called upon to pay as rates in respect of such premises for one year previously to the sixth day of April then next preceding, such person shall be considered as having been rated and paid all rates in respect of such premises within the meaning of the said recited Act, and be entitled to be registered in respect of the same in any year, any misnomer or inaccurate or insufficient descrip-

Not to vote unless rated to the poor rate.

Inaccurate description in rate not to prevent persons being registered.

Appendix. Sect. 75.

tion in any rate of the person so occupying or of the premises occupied notwithstanding.

How distances to be measured.

76. And whereas doubts have arisen as to the measurement of the distance of seven statute miles in the said first-recited Act mentioned and therein prescribed, as to the residence of voters for any city or borough: be it therefore declared and enacted, that the said distance shall be understood to be the distance of seven miles as measured in a straight line on the horizontal plane from the point within any city or borough or place sharing in the election therewith from which such distance is to be measured, according to the directions in that behalf in the said Act: provided always, that in cases where there is now or shall hereafter be a map of any city or borough, and of the country surrounding the same, drawn or published under the authority and direction of the principal officers of Her Majesty's ordnance, such distance may be measured and determined by the said map.

Freeholders in New Shoreham, Cricklade, &c., need not be assessed to land tax.

77. And whereas doubts have arisen whether, in order to entitle any person to vote for the borough of New Shoreham, or of Cricklade, Aylesbury, or East Retford respectively, in respect of any freehold messuages, lands, or tenements therein situate, it is necessary that the same should be assessed to the land tax: be it therefore declared and enacted, that in order to entitle any person to vote in any election of members to serve in parliament in respect of any freehold messuages, lands, or tenements situate within the borough of New Shoreham, Cricklade, Aylesbury, or East Retford respectively, it shall not be necessary that the same shall be assessed to the land tax, any statute to the contrary notwithstanding.

Sect. 78 does not relate to the municipal franchise.
Sect. 79 relates only to parliamentary elections.
Sect. 80 is repealed by 35 & 36 Vict. c. 33.

No inquiry at time of election, except as to identity of the voter, and whether he has already voted.

81. And be it enacted, that in all elections whatever of a member or members to serve in parliament for any county, riding, parts or division of a county, or for any city or borough in England or Wales, or the town of Berwick-upon-Tweed, no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows; (that is to say,) that the returning officer or his respective deputy shall, if required on behalf of any candidate, put to any voter at the

time of his tendering his vote, and not afterwards, the following questions, or either of them:

These questions will be found in the chapter on the Practice at a Municipal Election, p. 303.

And if any person shall wilfully make a false answer to either of the questions aforesaid he shall be deemed guilty of a misdemeanor, and shall and may be indicted and punished accordingly; and the returning officer or his deputy, or a commissioner or commissioners to be for that purpose by law appointed, shall, if required on behalf of any candidate at the time aforesaid, administer an oath to any voter in the following form:

The oath will be found at p. 285.

The 27th Rule, Part I. Sch. 1, of the Ballot Act of 1872, provides for the case of a person applying for a ballot paper after another person has voted in his name; and in that case such person is not entitled to vote until he has duly answered the questions, and taken the oath permitted by law to be asked of and administered to voters at the time of polling. Some doubts have been expressed if these provisions apply to municipal elections, as the practice differs in some important boroughs. (*See* Division III. of this work, p. 284.)

That portion of the section which relates to the appointment of a commissioner is repealed by 35 & 36 Vict. c. 33.

Sect. 82 refers only to parliamentary elections.

Sects. 83 and 84 are repealed by 35 & 36 Vict. c. 33.

Agents may be appointed by candidates to detect personation at the time of polling.

85. And for the more effectual detection of the personation of voters at elections, be it enacted, that it shall be lawful for any candidate, at any election of a member or members to serve in parliament for any county, city, or borough, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; and such candidate shall give notice in writing to the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agents for such purpose; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed.

Returning officer may order persons charged with personation to be taken into custody.

86. And be it enacted, that if at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer, or his respective deputy, presiding therein, that he verily believes, and under-

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takes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said returning officer, or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: provided always, that nothing herein contained shall be construed or taken to authorize any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorized by this Act to be put to him at the time of polling, and shall take the oaths or make the affirmations authorized and required of him; but the said returning officer, or his deputy, shall cause the words, "protested against for personation," to be placed against the vote of the person so charged with personation when entered in the poll book.

Vote not to be rejected if questions answered in the affirmative.

Persons charged with personation to be taken before two justices.

Bail to be taken in certain cases.

87. And be it enacted, that every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid: provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid, and such justice is hereby authorized and required to liberate such person on his entering into a recognizance, with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance, to answer the said charge; and if no such justice shall be found within four hours after the closing of the said poll then such person shall forthwith be discharged from custody: provided also, that if in consequence of the absence of such justice as aforesaid, or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as

aforesaid to inquire into the same on the next or on some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged.

If justices are satisfied that the person charged has been guilty of personation, they are to commit him for trial.

88. And be it enacted, that if on the hearing of the said charge the said two justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this Act, and is not in fact the person in whose name he voted, then it shall be lawful for the said two justices to commit the said offender to the gaol of the county, city, or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial as in the case of other misdemeanors.

If justices are satisfied that the charge is unfounded, they are to order compensation.

89. And be it enacted, that if the said justices shall on the hearing of the said charge be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf, shall not appear to support such charge before the said justices, then it shall be lawful for the said justices and they are hereby required to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay to the said person so falsely charged, if he shall consent to accept the same, any sum not exceeding the sum of ten pounds nor less than five pounds, by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from

Appendix. Sect. 89.

the said agent or candidate, with full costs of suit, in an action of debt to be brought in any one of Her Majesty's Superior Courts of Record at Westminster: provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceeding, civil or criminal, for or in respect of the said charge and apprehension.

If party falsely charged accepts compensation, no action to be brought.

Sect. 90 refers only to counties.
Sect. 91 is repealed by 35 & 36 Vict. c. 33.
Sects. 92 and 93 refer only to counties.
Sects. 94, 95, and 96 are repealed by 35 & 36 Vict. c. 33.
Sect. 97 refers only to counties.
Sects. 98 and 99 are repealed by 35 & 36 Vict. c. 33.

Notice of objection may be sent by the post.

100. And be it enacted, that it shall be sufficient, in every case of notice to any person objected to in any list of county, city, or borough voters, and in the livery list of the city of London, and also in the case of county voters to the occupying tenant whose name and place of abode appears in such respective list as aforesaid, if the notice so required to be given as aforesaid shall be sent by the post, free of postage, or the sum chargeable as postage for the same being first paid, directed to the person to whom the same shall be sent at his place of abode as described in the said list of voters; and whenever any person shall be desirous of sending any such notice of objection by the post, he shall deliver the same, duly directed, open and in duplicate, to the postmaster of any post office where money orders are received or paid, within such hours as shall have been previously given notice of at such post office, and under such regulations with respect to the registration of such letters, and the fee to be paid for such registration (which fee shall in no case exceed twopence over and above the ordinary rate of postage), as shall from time to time be made by the postmaster-general in that behalf; and in all cases in which such fee shall have been duly paid, the postmaster shall compare the said notice and the duplicate, and on being satisfied that they are alike in their address and in their contents, shall forward one of them to its address by the post, and shall return the other to the party bringing the same, duly stamped with the stamp of the said

post office; and the production by the party who posted such notice of such stamped duplicate shall be evidence of the notice having been given to the person at the place mentioned in such duplicate on the day on which such notice would in the ordinary course of post have been delivered at such place: Provided also, that if no place of abode of the person objected to shall be described in the said list, or if such place of abode shall be situate out of the United Kingdom, then it shall be sufficient if notice shall be given to the said overseers, and to such occupying tenant as aforesaid (if any) in the case of a county voter, or in the case of a city or borough voter, to the overseers or to the town clerk, or, in the case of a liveryman of the city of London, to the secondaries and clerk of the particular company to which the person objected to shall belong, as is in each of the said cases hereinbefore required.

Interpretation clause.

101. And be it enacted, that throughout this Act, in the construction thereof, except there be something in the subject or context inconsistent with or repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts or division of a county, respectively returning a knight or knights of the shire to serve in parliament; and the words "city or borough" shall extend to and mean any city, borough, town corporate, cinque port, district, or place within England and Wales returning a member or members to serve in parliament, other than counties at large, and ridings, parts and divisions of counties at large, and to every place sharing in the election of a member for any city or borough, and shall also include the town of Berwick-upon-Tweed; that the words "clerk of the peace" shall comprehend and apply to any deputy or other person executing the duties of such clerk of the peace; and the words "town clerk" shall, except in regard to the cities of London and Westminster, and the borough of Southwark, extend to and mean any person executing the duties of town clerk, or if in any city or borough there shall be no such officer as town clerk, then to any officer executing the same or like duties as usually devolve upon the town clerk, or if in any city or borough there be no such person, then to the returning officer of such city or borough, or to such person as the returning officer may appoint for that purpose, which he is hereby authorized to do; and the words "barrister" or "barristers" shall

Meaning of the word "county."

"City or borough."

"Clerk of the peace:"

"Town clerk:"

"Barrister:"

Appendix.

Sect. 101.

"Returning officer:"

"Parish or township."

"Overseers" or "overseers of the poor."

Provision as to service of notices.

respectively be taken to include a serjeant or serjeants-at-law; and the words "returning officer" shall apply to every person or persons to whom by virtue of his or their office, under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in parliament, by whatever name or title such person or persons may be called; and the words "parish or township" shall extend to and mean every parish, township, village, hamlet, district, or place maintaining its own poor; and the words "overseers" or "overseers of the poor" shall extend to and mean all persons who by virtue of any office or appointment shall execute the duties of overseers of the poor, by whatever name or title such persons may be called, and in whatsoever manner they may be appointed, and that all matters by this Act directed to be done by the overseers of a parish or township may be lawfully done by the major part of such overseers; and that wherever any notice is by this Act required to be given or sent to the overseers of any parish or township, it shall be sufficient if such notice shall be delivered to any one of such overseers, or shall be left at his place of abode, or at his office or other place for transacting parochial business, or shall be sent by the post, free of postage, or the postage thereof being first paid, addressed to the overseers of the particular parish or township, naming the parish or township, and the county, city, or borough respectively, to which the notice to be so sent may relate, without adding any place of abode of such overseers; and that wherever by this Act any notice is required to be given or sent to any person or persons whatsoever, or public officer, it shall be sufficient if such notice be sent by the post in the manner and subject to the regulations hereinbefore provided with respect to sending notices of objection by the post, free of postage, or the postage thereof being first paid, addressed with a sufficient direction to the person or persons to whom the same ought to be given or sent, at his or their usual place of abode; and that all provisions in this Act relative to any matters to be done by or with regard to justices of the peace for counties, or sessions of the peace for counties, or clerks of the peace for counties, or treasurers of counties, shall extend to the justices, sessions, clerks of the peace, and treasurers of the several ridings of Yorkshire and parts of Lincolnshire; and that the town clerk for the time being for the borough of Newport in the Isle of Wight shall for the purposes of this Act be deemed and taken to be the clerk of the peace for

Justices, sessions, clerks of the peace, and treasurers of counties.

Sect. 101.

Misnomer not to vitiate.

the county of the Isle of Wight; and that all the said respective justices, sessions, and clerks of the peace shall have power to do the several matters required by this Act, as well within places of exclusive jurisdiction as without; and that no misnomer or inaccurate description of any person, place, or thing named or described in any schedule to this Act annexed, or in any list or register of voters, or in any notice required by this Act, shall in anywise prevent or abridge the operation of this Act with respect to such person, place, or thing, provided that such person, place, or thing shall be so denominated in such schedule, list, register, or notice, as to be commonly understood; and that the word "oath" shall include affirmation, where by law such affirmation is required or allowed to be taken in place of an oath; and where the subject or context requires it, every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things.

"Oath."

Singular.

Plural.

By the 40th section of 41 & 42 Vict. c. 26, the provisions of this section are extended to the services of notice under that Act; and the term notice includes any document required to be sent or delivered.

SCHEDULE (A.) relates only to counties.

SCHEDULE (D.)

Forms in this schedule, with the exception of a few relating to freemen, are superseded by those contained in the schedule 41 & 42 Vict. c. 26.

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32 & 33 VICT. CAP. 41.

An Act for amending the Law with respect to the rating of Occupiers for short terms, and the making and collecting of the Poor's Rate. [26th July, 1869.]

WHEREAS it is expedient to amend the law relating to the collection of poor rates assessed upon occupiers of hereditaments held for short terms, and to the making and collecting of the poor rate;

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Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Occupiers of tenements let for short terms may deduct the poor rate paid by them from their rents.

1. The occupier of any rateable hereditament let to him for a term not exceeding three months shall be entitled to deduct the amount paid by him in respect of any poor rate assessed upon such hereditament from the rent due or accruing due to the owner, and every such payment shall be a valid discharge of the rent to the extent of the rate so paid.

Amount of rate payable by occupier.

2. No such occupier shall be compelled to pay to the overseers at one time or within four weeks a greater amount of the rate than would be due for one quarter of the year.

Owners may agree to pay the rate, and be allowed a commission.

3. In case the rateable value of any hereditament does not exceed twenty pounds, if the hereditament is situate in the metropolis, or thirteen pounds if situate in any parish wholly or partly within the borough of Liverpool, or ten pounds if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or eight pounds if situate elsewhere, and the owner of such hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament, for any term not being less than one year from the date of such agreement, and to pay the poor rates whether the hereditament is occupied or not, the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow to him a commission not exceeding twenty-five per cent. on the amount thereof.

Some doubt was expressed whether the 19th section of this Act for giving to the occupier the franchise applied to cases where the owner had not entered into an agreement with the overseers, or where the overseers had not made an order under the 4th section of this Act. The 14th section of 41 & 42 Vict. c. 26 has settled these doubts by making the said 19th section of general application.

Vestries may order the owner to be rated instead of the occupier.

4. The vestry of any parish may from time to time order that the owners of all rateable hereditaments to which section three of this Act extends, situate within such parish, shall be rated to the poor rate in respect of such rateable hereditaments, instead of the occupiers, on all rates made after the date of such

order; and thereupon and so long as such order shall be in force the following enactments shall have effect:

1. The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of fifteen per centum from the amount of the rate:
2. If the owner of one or more such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term not being less than one year in respect of all such rateable hereditaments of which he is the owner, whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow to him a further abatement or deduction not exceeding fifteen per centum from the amount of the rate during the time he is so rated:
3. The vestry may by resolution rescind any such order after a day to be fixed by them, such day being not less than six months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect:

Provided that this clause shall not be applicable to any rateable hereditament in which a dwelling house shall not be included.

The giving of notice in writing to the overseers by the owner will not affect the franchise. The 2nd section of 42 & 43 Vict. c. 10, provides as follows:—

Where by way of commission or abatement or deduction under the principal Act, or purporting or assumed to be under the principal Act, an allowance or deduction has, before the passing of this Act, been or shall hereafter be actually made, the same shall, for the purpose of every qualification or franchise depending upon rating or upon payment of rates, be deemed to have been duly made in pursuance of every or any agreement, order, notice, or proceeding necessary for the validity thereof under the principal Act, and to have been and to be an allowance or deduction which the overseers were and are empowered to make from the rate under the principal Act; and no qualification or franchise depending upon rating or upon payment of rates shall be defeated by reason of such allowance or deduction not having been made in pursuance of an agreement in writing, order in writing, or notice in writing, or by reason of the want of insufficiency of any agreement, order, notice, or proceeding necessary for the validity thereof under the principal Act, or by reason of any informality or defect in the making thereof; provided always, that this Act shall not relieve any overseers from any liability which they have incurred or may incur by making an allowance or deduction otherwise than in pursuance of the provisions of the principal Act, or affect any remedy for the recovery of the amount of such allowance or deduction.

Sects. 5 and 6 are omitted, as they relate only to forfeiture of commission and the repeal of 13 & 14 Vict. c. 9.

Constructive payment of the rate.

7. Every payment of a rate by the occupier, notwithstanding the amount thereof, may be deducted from his rent as herein

Appendix. Sect. 7.

provided, and every payment of a rate by the owner, whether he is himself rated instead of the occupier, or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise which as regards rating depends upon the payment of the poor rate.

See the 2nd section of 42 & 43 Vict. c. 10, in note to sect. 4, *ante*.

Where owners omit to pay rates, the occupiers paying the same may deduct the amount from the rent.

8. Where an owner who has undertaken, whether by agreement with the occupier or with the overseers, to pay the poor rates, or has otherwise become liable to pay the same, omits or neglects to pay any such rate, the occupier may pay the same and deduct the amount from the rent due or accruing due to the owner, and the receipt for such rate shall be a valid discharge of the rent to the extent of the rate so paid.

Sect. 9 compels owners to give list of occupiers to overseers.

Sect. 10 only amends sect. 28 of the Representation of the People Act, 1867.

Sects. 11 and 12 relate to the liability of an owner under agreement, and to the recovery of rates unpaid by owner.

Sect. 13 gives to the owner an appeal against valuation list and rates.

Sects. 14 and 15 relate to the period for which a rate may be made, and its payment by instalments.

Provision for successive occupiers, and for occupiers coming into unoccupied hereditaments.

16. If the occupier assessed in the rate when made shall cease to occupy before the rate shall have been wholly discharged, or if the hereditament being unoccupied at the time of the making of the rate become occupied during the period for which the rate is made, the overseers shall enter in the rate book the name of the person who succeeds or comes into the occupation, as the case may be, and the date when such occupation commences, so far as the same shall be known to them, and such occupier shall thenceforth be deemed to have been actually rated from the date so entered by the overseer, and shall be liable to pay so much of the rate as shall be proportionate to the time between the commencement of his occupation and the expiration of the period for which the rate was made, in like manner, and with the like remedy of appeal, as if he had been rated when the rate was made; and an outgoing occupier shall remain liable in like manner for so much and no more of the rate as is proportionate to the time of his occupation within

the period for which the rate was made; and the twelfth section of the statute 17 Geo. 2, c. 38, shall be repealed.

By sect. 38 of 31 & 32 Vict. c. 122, it is provided as follows:—

When any person shall occupy any new house or other building in any parish where the poor rate is not made under the provisions of a local Act, which house or building was incomplete, or not fit for occupation, or was not entered as such in the valuation list in force in the parish at the time when the current rate for the time being was made, the overseers may enter such house or building with the name of the occupier thereof and the date of the entry in the rate book, and require the occupier to pay such amount as according to their judgment shall be the proper sum, having due regard to the rateable value of such house or building, and the time which shall have elapsed from the making of the current rate to the date of such entry, and the person so charged shall be considered as actually rated from such date, and shall be liable to pay the sum assessed in like manner and subject to the like penalty of distress, and with the like power of appeal, as if he had been assessed for the same when the rate was made: provided that when the said overseers shall so enter the said house or building in the rate book they shall forward to the assessment committee of the union comprising such parish, if any such there be, a supplemental list with reference to such house or building, and the same shall be dealt with in all respects, and with the like incidents and consequences, as a supplemental list made by the overseers under section twenty-five of "The Union Assessment Committee Act, 1862."

The non-payment of an illegal rate will not disqualify. (*R.* v. *Mayor of New Windsor*, 7 Q. B. 908; *Fox* v. *Davies*, 18 L. J. C. P. 48; *R.* v. *Dyott*, L. R. 9 Q. B. 47.)

When the poor rate shall be deemed to be made.

17. A poor rate shall be deemed to be made on the day when it is allowed by the justices, and if the justices sever in their allowance then on the day of the last allowance.

Evidence of making and publication of rates.

18. The production of the book purporting to contain a poor rate, with the allowance of the rate by the justices, shall, if the rate is made in the form prescribed by law, be *primâ facie* evidence of the due making and publication of such rate.

Overseers to insert names of all occupiers in the rate.

Penalty for omission.

19. The overseers in making out the poor rate shall, in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupiers column of the rate book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise as aforesaid; and if any overseer negligently or wilfully and without reasonable cause omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, such overseer shall for every such omission or misstatement be liable on sum-

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Sect. 19. Saving of franchises.

mary conviction to a penalty not exceeding two pounds; provided that any occupier whose name has been omitted shall, notwithstanding such omission and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating, in the same manner as if his name had not been so omitted.

Sect. 14 of 41 & 42 Vict. c. 26, provides that the above section shall not apply exclusively to cases where an agreement or an order has been made under 32 & 33 Vict. c. 41. See also sect. 2 of 42 & 43 Vict. c. 10, cited in note to sect. 4 above.

Interpretation of terms.

20. The word "overseer" shall include every authority that makes an assessment for the poor rate; the words "poor rate" shall mean the assessment for the relief of the poor, and for the other purposes chargeable thereon according to law, and in the metropolis shall extend to every rate made by the overseers, and chargeable upon the same property as the poor rate; the word "owner" shall mean any person receiving or claiming the rent of the hereditament for his own use, or receiving the same for the use of any corporation aggregate, or of any public company, or of any landlord or lessee who shall be a minor, a married woman, or insane, or for the use of any person for whom he is acting as agent; the word "parish" shall signify every place for which a separate overseer can be appointed; the word "vestry" shall include not only the vestry of a parish existing under the authority of some general or special Act of Parliament, or by special custom or otherwise, but also the meeting of the inhabitants of any township, vill, or place having a separate overseer, and for which a separate poor rate is made, held after notice given in like manner as is required by law in regard to the meetings of vestries; and the word "metropolis" shall include only the metropolis as defined by the Metropolis Management Act, 1855.

Sects. 21 and 22 provide that the Act shall not extend to Scotland or Ireland, and as to its coming into force, and provides that this Act may be cited as "The Poor Rate Assessment Act, 1869."

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An Act to amend the Law relating to the Registration of Voters in Parliamentary Boroughs and the Enrolment of Burgesses in Municipal Boroughs, and relating to certain rights of voting and proceedings before and appeals from Revising Barristers. [22nd July, 1878.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short titles.

1. This Act may be cited as the Parliamentary and Municipal Registration Act, 1878.

The Acts referred to in this Act by short titles may be cited for all purposes by those titles respectively.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

3. This Act shall come into operation on the first day of February, one thousand eight hundred and seventy-nine, which date is in this Act referred to as the commencement of this Act.

Definitions.

4. In this Act—

The term "Reform Act, 1832," means the Act of the session of the second and third years of the reign of King William the Fourth, chapter forty-five, "to amend the representation of the people in England and Wales;"

The term "Municipal Corporation Acts" means the Municipal Corporation Act, 1835, and the Acts amending the same : 5 & 6 W. 4, c. 76.

The term "Parliamentary Registration Act, 1843," means the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen, "to amend the law for the registration of persons entitled to vote, and to define certain rights of voting and to regulate certain proceedings in the election of members to serve in Parliament for England and Wales :" 40 & 41 Vict. c. 69.

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The term "Parliamentary Registration Acts" means the Parliamentary Registration Act, 1843, and any enactment amending the same or otherwise relating to the registration of parliamentary electors:

The term "parliamentary borough" means any borough, city, county of a city, county of a town, place, or combination of places returning a member or members to serve in Parliament, and not being a county at large, or riding, part, or division of a county at large:

The term "municipal borough" means any place for the time being subject to the Municipal Corporation Acts:

The term "parliamentary voter" means a person entitled to be registered as a voter and when registered to vote at the election of a member or members to serve in Parliament for a parliamentary borough:

The term "burgess" has the same meaning as in the Municipal Corporation Acts:

The term "parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed:

Other terms used in this Act have the same meaning as in the Parliamentary Registration Acts.

The reference to the "Municipal Corporation Acts" is now to be deemed to be a reference to the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50, s. 242, sub-s. 3). As to what is a "parish" within the meaning of this section, see *Sargent* v. *Rodd*, Colt. Reg. Cas. 14; 49 L. J. C. P. 195.

Sect. 5 is omitted, as it is reproduced in identical terms, so far as the municipal franchise is concerned, by the 31st section of the Municipal Corporations Act, 1882.

Sect. 6 relates only to the parliamentary franchise.

Sect. 7 relates to the period of qualification, which is now fixed by the 9th section of the Municipal Corporations Act, 1882.

Forms relating to registration in parliamentary boroughs and burgess lists in certain municipal boroughs.

8. In every parliamentary borough and in every municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, the forms in the schedule to this Act, or forms to the like effect, varied as circumstances require, shall be used for the purposes for which the same are applicable respectively, and shall for the purposes of the Parliamentary Registration Acts and this Act be deemed to be substituted for any corresponding forms in the schedules to the Parliamentary Registration Acts.

The said schedule and the notes thereto shall be construed and have effect as if enacted in the body of this Act.

All precepts, instructions, proceedings, notices, and lists relating to the registration of parliamentary voters or enrolment of burgesses shall be expressed in such manner and form as may be necessary to carry the provisions of this Act into effect.

The forms to be used in boroughs, not parliamentary, are those set forth in the Eighth Schedule, Part II. of the Municipal Corporations Act, 1882.

Publication of notices and lists in post and telegraph offices, &c.

9. In every parliamentary borough and in every municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, any notice or list which is by the Parliamentary Registration Acts or this Act directed to be published by overseers shall be published by them not only in the manner directed by those Acts, but also by being affixed and kept in some public and conspicuous position in or near every post office and telegraph office occupied by or on behalf of Her Majesty's Postmaster General, and in or near every public or municipal or parochial office within the parish to which the list relates.

All the provisions of those Acts with respect to the publication of notices or lists shall apply to the publication to be made under this section.

Notice of rates in arrear.

10. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, section eleven of the Parliamentary Registration Act, 1843, and section twenty-eight of the Representation of the People Act, 1867 (which relate to the notices to be published and given with respect to rates and taxes in arrear), shall, as amended by this Act, extend with the necessary modifications to the rates of which the payment is required as a condition of enrolment on the burgess roll, and all the provisions of those sections as so amended shall apply to the overseers of parishes situate wholly or partly in a municipal borough accordingly.

6 & 7 Vict. c. 18, s. 11. 30 & 31 Vict. c. 102, s. 28.

Any notice required to be given under this section shall be deemed to be duly given if delivered to the occupier or left at his last or usual place of abode, or with some person on the premises in respect of which the rate is payable.

In case no such person can be found, then the notice required to be given under this section or under section twenty-eight of the Representation of the People Act, 1867, shall be deemed to be duly given if affixed upon some conspicuous part of the premises.

30 & 31 Vict. c. 102, s. 28.

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Any overseer who with intent to keep an occupier off the list or register of voters for a parliamentary borough, or off the burgess lists or burgess roll of a municipal borough, shall wilfully withhold any notice required by this section to be given to such occupier, shall be deemed guilty of a breach of duty in the execution of this Act.

30 & 31 Vict. c. 102, s. 29.

Section twenty-nine of the Representation of the People Act, 1867, shall extend and be applicable to every parish situate wholly or partly within a municipal borough whose burgess lists are revised under this Act.

Sects. 28 and 29 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), are as follow:—

28. Where any poor rate due on the fifth day of January in any year from an occupier in respect of premises capable of conferring the franchise for a borough remains unpaid on the first day of June following, the overseers whose duty it may be to collect such rate shall, on or before the twentieth of the same month of June, unless such rate has previously been paid, or has been duly demanded by a demand note, to be served in like manner as the notice in this section referred to, give or cause to be given a notice in the form set forth in Schedule (E.) to this Act to every such occupier. The notice shall be deemed to be duly given if delivered to the occupier or left at his last or usual place of abode, or with some person on the premises in respect of which the rate is payable. Any overseer who shall wilfully withold such notice, with intent to keep such occupier off the list or register of voters for the said borough, shall be deemed guilty of a breach of duty in the execution of the Registration Acts.

29. The overseers of every parish wholly or partly within a borough shall, on or before the twenty-second day of July in every year, make out a list containing the name and place of abode of every person who shall not have paid on or before the twentieth day of the same month, all poor rates which shall have become payable from him in respect of any premises within the said parish before the fifth day of January then last past, and the overseers shall keep the said list to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday during the first fourteen days after the said twenty-second day of July; any overseer wilfully neglecting or refusing to make out such list, or to allow the same to be perused as aforesaid, shall be deemed guilty of a breach of duty in the execution of the Registration Acts.

Sect. 28 applies to occupiers of premises capable of conferring the parliamentary franchise, although the owners have become liable for the rates under The Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41, s. 10).

Registrars to furnish returns of deaths to overseers.

11. Every registrar of births and deaths whose sub-district includes the whole or part of any parliamentary borough or any municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, shall transmit by post or otherwise to the overseers of every parish the whole or any part of which is included in the

parliamentary borough or municipal borough and also in his sub-district, a return certified under his hand to be a true return of the names, ages, and residences of all male persons of full age dying within that parish or part, and also when and as required by those overseers of the names, ages, and residences of all women of full age dying within that parish or part.

The returns shall state the names of all such persons in full (where the names are known) and the dates of their deaths, and the names and residences of the persons by whom information of the deaths was given to the registrar.

The returns shall be made four times a year; that is to say,

On or before the seventh day of April for the three months ending with the preceding thirty-first day of March;

On or before the twenty-second day of July for the period beginning with the preceding first day of April and ending with the fifteenth day of July;

On or before the fifteenth day of September, or at such other time before the completion of the revision of the lists of the parliamentary borough or municipal borough to the area of which the return relates as the barrister revising the same shall appoint in that behalf for the period beginning with the preceding sixteenth day of July, and ending with the time when such return is made, or as near thereto as practicable;

And on or before the seventh day of January for the period beginning with the preceding fifteenth day of September or from the time for which the last preceding return was made, and ending with the thirty-first day of December:

The registrar making any such return shall be entitled to fees at the rate specified in the twenty-eighth section of the Births and Deaths Registration Act, 1874, in respect of the returns therein mentioned, and such fees shall be paid by the overseers as part of the expenses of carrying into effect the provisions of this Act with respect to the lists of parliamentary voters and burgess lists. 37 & 38 Vict. c. 88, s. 28.

The overseers shall omit from any list made by them the name of any person who appears from such returns to be dead, and shall allow any person who is registered as a parliamentary voter of the parliamentary borough or enrolled as a burgess of the municipal borough to which the returns relate to inspect

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any such returns in their custody at all reasonable times free of charge.

The 28th section of the Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), is as follows:—

Every registrar, when and as required by a sanitary authority, as defined by the Public Health Act, 1872, shall transmit by post or otherwise a return, certified under the hand of such registrar to be a true return of such of the particulars registered by him concerning any death as may be specified in the requisition of the sanitary authority.

The sanitary authority may supply a form of the prescribed character, for the purpose of the return, and in that case the return shall be made in the form so supplied.

The registrar making such return shall be entitled to a fee of twopence, and to a further fee of twopence for every death entered in such return, which fee shall be paid by the authority requiring the return.

List of persons disqualified by parochial relief.

12. The overseers of every parish situate wholly or partly either in a parliamentary borough or in a municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, shall ascertain from the relieving officer acting for that parish the names of all persons who are disqualified for being inserted in the lists of parliamentary voters or burgess lists for that parish by reason of having received parochial relief, and the relieving officer, upon application from the overseers, shall produce to them at such place within the parish, and at such time as is required by them, the books in his possession containing the names of those persons.

Inspection of rate books.

13. In every parish situate wholly or partly either in a parliamentary borough or in a municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, the books containing the poor rates made for the parish within the previous two years shall at all reasonable times be open, free of charge, to the inspection of any person who is registered as a parliamentary voter for the parliamentary borough, or enrolled as a burgess of the municipal borough, and any such voter or burgess may make any copy thereof or take any extract therefrom.

In a borough solely municipal the mayor and assessors sitting as a court of revision may require the production of the rate books. (Third Schedule, Part I. of the Municipal Corporations Act, 1882.)

Explanation of 32 & 33 V. c. 41, s. 19,

14. Whereas by section nineteen of the Poor Rate Assessment and Collection Act, 1869, the overseers in making out the

as to entering occupier's name in rate book.

poor rate are required in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, to enter in the occupier's column of the rate book the name of the occupier of every rateable hereditament, and it is thereby declared that every such occupier shall be deemed to be duly rated for any qualification or franchise as therein mentioned; and whereas doubts have been entertained as to the application of this enactment, and it is expedient to remove them: be it therefore enacted that the recited enactment shall not be deemed to apply exclusively to cases where an agreement has been made under section three of the same Act, or where an order has been made under section four of the same Act, but shall be of general application.

This section applies to all municipal boroughs. (*See* sect. 2 of 42 & 43 Vict. c. 10, cited in note to sect. 7 of 32 & 33 Vict. c. 41.)

Preparation of lists of parliamentary voters and burgess lists together in certain cases.

15. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the lists of parliamentary voters and the burgess list shall so far as practicable be made out and revised together.

In every such case the overseers of every parish situate wholly or partly either in the parliamentary borough or in the municipal borough shall, on or before the last day of July in every year make out a list of all persons entitled under any right conferred by the Reform Act, 1832, or by section three of the Representation of the People Act, 1867, to be registered as voters for the parliamentary borough in respect of the occupation of property situate wholly or partly within that parish, or entitled to be enrolled as burgesses of the municipal borough in respect of the occupation of any property so situate.

2 & 3 Will. 4, c. 45.
30 & 31 Vict. c. 102, s. 3.

With respect to every list so made out the following provisions shall have effect:

(1.) The lists shall be in substitution for the lists of persons so entitled, which are required to be made out under the Parliamentary Registration Acts and the Municipal Corporation Acts:

(2.) Where the parish is wholly or partly both in the parliamentary borough and in the municipal borough, the list for the parish shall be made out in three divisions:

Division one shall comprise the names of the persons entitled both to be registered as parliamentary voters

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under a right conferred as aforesaid and to be enrolled as burgesses;

Division two shall comprise the names of the persons entitled to be registered as parliamentary voters under a right conferred as aforesaid, but not to be enrolled as burgesses;

Division three shall comprise the names of the persons entitled to be enrolled as burgesses, but not to be registered as parliamentary voters under a right conferred as aforesaid:

(3.) Each list shall state the surname and other name or names of every person whose name is inserted therein, his place of abode, the nature of his qualification, and the situation and description of the property in respect of which he is entitled:

(4.) Each list shall be signed and otherwise dealt with in manner directed by the Parliamentary Registration Acts with respect to the alphabetical lists mentioned in section thirteen of the Parliamentary Registration Act, 1843:

6 & 7 Vict. c. 18, s. 13.

(5.) Where no part of the parish is situate within the municipal borough, the list for the parish shall be deemed to be a list of voters for the parliamentary borough:

(6.) Where no part of the parish is situate within the parliamentary borough, the list for the parish shall be deemed to be a burgess list for the municipal borough:

(7.) Where the list is made out in divisions, divisions one and two shall be deemed to be lists of voters for the parliamentary borough, and divisions one and three shall be deemed to be burgess lists for the municipal borough:

(8.) The lists, and if the lists are made out in divisions, each division thereof, shall, if and so far as the local authority from time to time direct, according to convenience for use, be framed in parts for polling districts or wards; and where the polling districts and wards are not conterminous, in such manner that the parts may be conveniently compiled or put together to serve either as lists for polling districts or as ward lists.

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Freemen's and other rights.
2 & 3 Will. 4, c. 45.
30 & 31 Vict. c. 102, s. 3.

16. In the case of any parliamentary borough in which any persons are entitled to be registered as freemen, or under any right other than a right conferred by the Reform Act, 1832, or the third section of the Representation of the People Act, 1867, the registration of such persons shall be carried out in the manner directed by the Parliamentary Registration Acts, as modified by this Act.

See sect. 14 of 6 & 7 Vict. c. 18, *ante*. *See* sect. 209 of the Municipal Corporations Act, 1882.

Provision where several municipal boroughs included in one parliamentary borough.

17. In the case of a parliamentary borough which includes in whole or in part more municipal boroughs than one, each such municipal borough shall, for the purposes of this Act, be dealt with separately and as if each were the only municipal borough included in whole or in part in such parliamentary borough, and if any parish is partly in one and partly in another or others of such municipal boroughs, so much thereof as is in any one of such municipal boroughs shall, for the purposes of this Act, be dealt with as a separate parish.

The town clerk of each such municipal borough shall, so far as regards the area of such municipal borough, issue the precepts and perform the other duties to be performed by the town clerk under and shall be the town clerk for the purposes of the Parliamentary Registration Acts and this Act.

Application of Parliamentary Registration Acts to burgess lists made out under this Act.

18. The Municipal Corporations Act shall not, as to anything prior to the completion of the revision of the burgess lists, apply to any burgess list made out under this Act, and instead thereof the Parliamentary Registration Acts, as modified by this Act, shall, up to the completion of the revision of the burgess lists, apply to every such burgess list, as if it were a list of parliamentary voters made out under those Acts, and as if the municipal borough to which such burgess lists relate were a parliamentary borough: provided as follows:

(1.) Nothing in this Act shall authorise a person entered on a burgess list, not being also entered on a list of parliamentary voters, to make any objection in respect of a list of parliamentary voters, or authorise any person entered on a list of parliamentary voters, not being also entered on a burgess list, to make any objection in respect of a burgess list;

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(2.) The last day for revising a burgess list made out under this Act shall be the twelfth day of October; and

(3.) The burgess lists when revised shall be copied for the burgess roll in manner directed by the Municipal Corporation Acts.

The 45th section of the Municipal Corporations Act, 1882, directs the revising authority to deliver the lists when revised to the town clerk, and a printed copy thereof, examined by him, and signed by him, shall be the burgess roll of the borough.

Lists of persons qualified to be aldermen or councillors, but not to be burgesses.

19. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the separate lists of the persons entitled to be elected councillors or aldermen of the municipal borough, though not entitled to be on the burgess roll, shall be made out at the same time and in the same manner as the burgess lists, and all the provisions of this Act with respect to the burgess lists shall apply to those separate lists.

See sect. 11 of the Municipal Corporations Act, 1882, and note (*f*) thereon.

Sect. 20 is repealed by 45 & 46 Vict. c. 50.

Lists and registers may be arranged according to streets.

21. If and so far as the local authority so direct, the lists of parliamentary voters and registers of parliamentary voters in parliamentary boroughs, and the burgess lists and burgess rolls in municipal boroughs, and the lists of claimants and persons objected to in parliamentary boroughs and municipal boroughs respectively, or any of those documents, shall, so far as they relate to persons qualified in respect of the ownership or occupation of property (including persons qualified in respect of lodgings), be arranged in the same order in which the qualifying premises appear in the rate book for the parish in which those premises are situate, or as nearly thereto as will cause those lists, registers, and rolls to record the qualifying premises in successive order in the street or other place in which they are situate, subject in the case of a municipal borough divided into wards to the division of the burgess roll into ward lists. The local authority in this Act means as regards a parliamentary borough the authority having power to divide the parliamentary borough into polling districts, and as regards a municipal borough the council of the municipal borough.

See sect. 46 of the Municipal Corporations Act, 1882. As to numbering the names in the burgess roll, *see* 45th section of the same Act.

Sects. 22 and 23 relate only to parliamentary.

Sect. 24. Declaration as to misdescription.

24. Any person who is entered on any list of voters for a parliamentary borough or any burgess list, subject to revision under this Act, for a municipal borough, and whose name or place of abode or the nature of whose qualification or the name or situation of whose qualifying property is not correctly stated in such list, or in respect of whom there is any other error or omission in the said list, may, whether he has received a notice of objection or not, if he thinks fit, make and subscribe a declaration in the form in that behalf in the schedule to this Act, or as near thereto as the circumstances will admit, before any justice of the peace or any commissioner or other person authorised to administer oaths in the Supreme Court of Judicature.

The declaration shall be duly dated, and shall on or before the twelfth day of September be sent to the town clerk, who forthwith shall indorse on the declaration a memorandum signed or initialed by him, stating the date when he received it, and naming the declarant, and the list to which the declaration refers, and shall deliver all such declarations to the revising barrister at his first court.

If the declaration is sent as aforesaid in due time (of which the said indorsement shall be *primâ facie* proof), the revising barrister shall receive the declaration as evidence of the facts declared to, and that without proof of the signature of the declarant, or of the justice, commissioner, or person before whom the declaration purports to have been subscribed, unless he has good reason to doubt the genuineness of any signature thereto.

The declarations shall be open free of charge to public inspection at the office of the said town clerk, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, before the fifteenth day of September, and he shall deliver copies thereof on application and payment of the price of fourpence per folio of seventy-two words.

In the case of *Porrett* v. *Lord*, L. R. 5 C. P. D. 65 ; Colt. Reg. Cas. 46, the court *held* that this section does not authorize an amendment of the description of qualification by adding premises to those described in the list, so as to make up the necessary qualification.

Penalty for false declaration.

25. If any person falsely or fraudulently signs any such declaration as last aforesaid, or any declaration either as claimant

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or witness in respect of a claim to vote as a lodger in the name of any other person, whether that person is living or dead, or in a fictitious name, or sends as genuine any false or falsified declaration knowing the same to be false or falsified, or knowingly and wilfully makes any false statement of fact in any declaration of the nature aforesaid, he shall be guilty of a misdemeanor and punishable by fine or by imprisonment for a term not exceeding one year, and the revising barrister shall have power to impound the declaration.

Notice of objection to state specific grounds of objection, &c.
6 & 7 Vict. c. 18, ss. 17, 20.
28 & 29 Vict. c. 36, ss. 7, 8.

26. The notice required by the seventeenth and twentieth sections of the Parliamentary Registration Act, 1843, to be given to persons objected to in boroughs for the purposes of the revision of the lists of voters for a parliamentary borough and the burgess lists for a municipal borough whose burgess lists are revised under this Act, shall state specifically the ground or grounds of objection, and sections seven and eight of the County Voters Registration Act, 1865, shall extend to such objections.

See the 17th and 20th sections of the Parliamentary Registration Act (6 & 7 Vict. c. 18), *ante*.

The 7th and 8th sections of the County Registration Act, 1865 (28 & 29 Vict. c. 36), are as follows:—

No person objected to under the provisions of this Act shall be required to give evidence before the revising barrister in support of his right to be registered, otherwise than as such right shall be called in question in such ground or grounds of objection.

Every separate ground of objection shall be treated by the revising barrister as a separate objection; and for every ground of objection which, in the opinion of the revising barrister, shall have been groundlessly or frivolously and vexatiously stated in a notice of objection, he shall, on the application of the person objected to, or any one on his behalf, and upon production of the notice of objection, award costs against the objector to the amount at least of two shillings and sixpence, and this though the name of the person objected to be expunged upon some other ground of objection stated in the same notice of objection.

Revision of lists of voters.

27. For the purposes of the revision of the lists of voters for a parliamentary borough, and the burgess lists for a municipal borough whose burgess lists are revised under this Act—

Objections may be withdrawn.

(1.) An objection may be withdrawn by a notice to that effect in writing, signed by the objector, and given to the person objected to and to the town clerk not less than seven days before the day which shall be appointed for the holding of the first court of revision of the list to which the objection relates:

Reviver of objections on death of objector.

(2.) Any objection by a qualified objector may, after his death, be revived by any other person qualified to have made the objection originally by a notice to that effect in writing signed by him, and given to the person objected to and to the town clerk at or before the time of the revision of the entry to which the objection relates:

A person reviving an objection shall be deemed to have made the objection originally, and he shall be responsible in respect thereof, and the proceedings thereon shall be continued accordingly:

Costs of objections.

(3.) Where objection is made otherwise than by an overseer to any person whose name appears on a list of voters or burgesses and the name is retained on the list, the revising barrister shall, unless he is of opinion that the objection was reasonably made either because of a defect or error in the entry to which the objection relates, or because of a difficulty in verifying or identifying the particulars comprised in such entry, or unless the objection is duly withdrawn, or unless for some other special reason he otherwise determines, order costs not exceeding forty shillings to be paid by the objector to the person objected to.

Duties and powers of revising barrister.

28. A revising barrister shall, with respect to the lists of voters for a parliamentary borough and the burgess lists for a municipal borough which he is appointed to revise, perform the duties and have the powers following:

(1.) He shall correct any mistake which is proved to him to have been made in any list:

The word "shall" in this paragraph is imperative. (See *Pickard* v. *Baylis*, L. R. 5 C. P. D. 235).

(2.) He may correct any mistake which is proved to him to have been made in any claim or notice of objection:

It is not obligatory on the barrister to correct or amend, only discretionary. (See *Pickard* v. *Baylis*, L. R. 5 C. P. D. 235.)

An objector described himself in the notice of objection as "on the list of parliamentary voters for the parish of H.," but omitted to insert his place of abode. He was a solicitor practising at H., and had resided at H. all his life. It was admitted that the insertion of the words "of H.," would have sufficiently described the objector's place of abode, and the barrister found

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as a fact, that no one had been misled or deceived by the omission. It was *held* that under the circumstances the omission was a "mistake" within the meaning of this sub-section. (*Adams* v. *Bostock*, L. R. 8 Q. B. D. 259.)

(3.) He shall expunge the name of every person, whether objected to or not, whose qualification as stated in any list is insufficient in law to entitle such person to be included therein :

(4.) He shall expunge the name of every person who, whether objected to or not, is proved to the revising barrister to be dead:

(5.) Where an entry in any list and an entry in a return made to the overseers of deaths appear to relate to the same person, the revising barrister shall inquire whether such entries relate to the same person, and on proof being made to him that the entries relate to the same person, shall expunge the entry in the list therefrom :

(6.) The revising barrister shall expunge the name of every person, whether objected to or not, whose name or place of abode, or the nature of whose qualification, or the name or situation of whose qualifying property, if the qualification is in respect of property, or any other particulars respecting whom by law required to be stated in the list, is or are either wholly omitted or in the judgment of the revising barrister insufficiently described for the purpose of being identified, unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of the revising barrister before he shall have completed the revision of the list in which the omission or insufficient description occurs, and in case such matter or matters shall be so supplied, he shall then and there insert the same in such list :

(7.) He shall expunge the name of every person, whether objected to or not, where it is proved to the revising barrister that such person was, on the last day of July then next preceding, incapacitated by any law or statute from voting at an election for the parliamentary borough, or an election for the municipal borough, as the case may be, to which the list relates :

The last day of July in this sub-section appears to be at variance with the 7th section, which mentions the 15th of July.

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The *incapacity* referred to in this sub-section means such incapacities as those mentioned in *Stowe* v. *Jolliffe*,—not a mere temporary disqualification by reason of the receipt of parochial relief during the disqualifying period. In absence of a notice of objection, the barrister is not bound to expunge the name of a person who had been in the receipt of parochial relief. (*Hayward* v. *Scott*, L. R. 5 C. P. D. 231.) The incapacities mentioned in *Stowe* v *Jolliffe*, L. R. 9 C. P. 734, are the following:—Persons who for some inherent, or for the time being irremovable quality in themselves, have not, either by prohibition of statutes, or at common law, the status of parliamentary electors, such as peers, women, persons holding certain offices or employments under the Crown, persons convicted of crimes which disqualify, or the like.

(8.) Before expunging from a list the name of any person not objected to, the revising barrister shall cause such notice, if any, as shall appear to him necessary or proper under the circumstances of the proposal to expunge the name, to be given to or left at the usual or last known place of abode of such person:

(9.) Subject as herein and otherwise by law provided, the revising barrister shall retain the name of every person not objected to, and also of every person objected to, unless the objector appears by himself or by some person on his behalf in support of his objection:

See *Hayward* v. *Scott*, in note to sub-sect. 7.

(10.) If the objector so appears, the revising barrister shall require him, unless he is an overseer, to prove that he gave the notice or notices of objection required by law to be given by him, and to give *primâ facie* proof of the ground of objection, and for that purpose may himself examine and allow the objector to examine the overseers or any other person on oath, touching the alleged ground of objection, and unless such proof is given to his satisfaction shall, subject as herein and otherwise by law provided, retain the name of the person objected to:

An objection made under this Act by overseers shall be deemed to cast upon the person objected to the burden of proving his right to be on the list:

The *primâ facie* proof shall be deemed to be given by the objector if it is shown to the satisfaction of the revising barrister by evidence, repute, or otherwise, that there is reasonable ground for believing that the objection is well founded, and that by reason of the person objected to not being present for examination,

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or for some other reason, the objector is prevented from discovering or proving the truth respecting the entry objected to:

(11.) If such proof is given by the objector as herein prescribed, or if the objection is by overseers, then, unless the person objected to appears by himself or by some person on his behalf, and proves that he was entitled on the last day of July then next preceding to have his name inserted in the list in respect of the qualification described in such list, the revising barrister shall expunge the name of the person objected to:

The last day in July in this sub-section is at variance with the provision in sect. 7.

(12.) Where the matter stated in a list or claim, or proved to the revising barrister in relation to any alleged right to be on any list, is in the judgment of the revising barrister insufficient in law to constitute a qualification of the nature or description stated or claimed, but sufficient in law to constitute a qualification of some other nature or description, the revising barrister, if the name is entered in a list for which such true qualification in law is appropriate, shall correct such entry by inserting such qualification accordingly, and in any other case shall insert the name with such qualification in the appropriate list, and shall expunge it from the other list, if any, in which it is entered:

(13.) Except as herein provided, and whether any person is objected to or not, no evidence shall be given of any other qualification than that which is described in the list or claim, as the case may be, nor shall the revising barrister be at liberty to change the description of the qualification as it appears in the list except for the purpose of more clearly and accurately defining the same:

The appellant's qualification being described in a list of voters as a "house," "8, Birley Place," he made and sent in a declaration for amending misdescription, and that the correct description was "houses in succession," "8, Birley Place, and 9, Birley Place." It was *held* that the barrister was right in expunging the appellant's name from the list, for there had been an alteration in the nature of the qualification, and to substitute "houses in succession" for "house" would be such a change in the description of the qualification as was not authorized by this section. (*Porrett* v. *Lord* L. R. 5 C. P. D. 65.)

The respondent had a sufficient qualification for the borough franchise as the occupier of a dwelling-house under the Representation of the People Act, 1867, s. 3, but not under the Reform Act, 1832, s. 27, the yearly value of the house being under £10. The respondent's qualification was described in the list as "house." The respondent being objected to, the barrister was of opinion that such description was sufficient, but he amended it by adding the word "dwelling" to the word "house," and retained the respondent's name on the list. *Held* (without determining whether the description as it originally stood was sufficient), that the case came within the provisions of this sub-section and the preceding one, and the barrister had power to make the amendment. (*Friend* v. *Towers*, L. R. 10 Q. B. D. 87.)

(14.) Where the name of any person appears to be entered more than once as a parliamentary voter on the lists of voters for the same parliamentary borough, or more than once as a burgess on the burgess lists for the same municipal borough, the revising barrister shall inquire whether such entries relate to the same person, and on proof being made to him that such entries relate to the same person shall retain one of the entries for voting, and place against the other or others a note to the effect that the person is not entitled to vote in respect of the qualification therein contained for the parliamentary borough or for the municipal borough, as the case may be, he being on the list for voting in respect of another qualification:

Any such person may, by notice in writing delivered to the revising barrister at the opening of his first revision court, select the entry to be retained for voting, and in making such selection may select one entry to be retained for voting for the parliamentary borough, and another entry to be retained for voting as a burgess for the municipal borough, but if he does not make any selection the entry to be so retained shall be selected by the revising barrister, except in the case of freemen, in which case the entry to be retained by the revising barrister for voting shall be that on the freemen's list:

If any question on appeal, or otherwise, arise as to the validity of the qualification for which the parliamentary voter or burgess is on the list for voting, recourse may be had for supporting the right of the voter or burgess to be on the parliamentary register

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or burgess roll for voting to any other qualification of such person appearing on the register or burgess roll:

Provided always, that in the case of a municipal borough divided into wards a vote given in or the right to vote in one ward shall not be supported by a qualification appearing on the burgess roll for some other ward:

Nomination papers must be subscribed by burgesses of the ward, where a borough is divided into wards. (Municipal Corporations Act, 1882, Third Schedule, Part II., Rule 2.)

(15.) Where a list is made out in divisions the revising barrister shall place the name of any person in the division in which it should appear according to the result of the revision, regard being had to the title of the person to be on the list both as a parliamentary voter and as a burgess, or only in one of those capacities, and shall expunge the name from the other division (if any) in which it appears.

This section shall, as regards every parliamentary borough and every municipal borough whose burgess lists are revised under this Act, take effect instead of section forty of the Parliamentary Registration Act, 1843.

6 & 7 Vict. c. 18, s. 40.

Power to fine overseers for neglect of duty.

29. The provisions of the fifty-first section of the Parliamentary Registration Act, 1843, relating to the power of the revising barrister to fine overseers for neglect of duty, shall extend to every wilful refusal, neglect, or breach of duty on the part of overseers in the execution of this Act.

6 & 7 Vict. c. 18, s. 51.

Expenses and receipts.

30. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the expenses properly incurred by the town clerk (including in his expenses the matters mentioned in section thirty-one of the Representation of the People Act, 1867), and the expenses properly incurred by the overseers in carrying into effect the provisions of this Act with respect to the lists of parliamentary voters and burgess lists, and all moneys received in respect of any of those lists, or in respect of any fine imposed by the revising barrister on the revision of the lists, shall be respectively paid and applied as follows:

30 & 31 Vict. c. 102, s. 31.

(1.) If the area of the parliamentary borough and the area of the municipal borough are co-extensive, one-half of the expenses shall be defrayed in the manner provided by the Parliamentary Registration Acts as expenses incurred thereunder, and the other half shall be defrayed out of the borough fund, and one-half of the moneys received as aforesaid shall be applied in the manner directed in those Acts, and the other half shall be paid to the borough fund:

(2.) In all other cases the expenses and receipts in respect of the area common to the parliamentary borough and to a municipal borough shall, as to one-half thereof, be defrayed and applied as expenses and receipts under the Parliamentary Registration Acts, and shall as to the other half thereof be defrayed out of and paid to the borough fund of such municipal borough:

And the expenses and receipts in respect of an area exclusively parliamentary shall be defrayed and applied as expenses and receipts under the Parliamentary Registration Acts:

And the expenses and receipts of an area exclusively municipal shall be defrayed out of and paid to the borough fund of the municipal borough comprising such area:

Any expenses and receipts incurred or arising in respect of more than one such area shall be apportioned between the several areas in respect of which they are incurred or arise, in the proportion as nearly as may be in which the same are incurred and arise in respect of the several areas, regard being had to the number of parliamentary voters or burgesses in each area, or any other circumstances occasioning the expenses or giving rise to the receipts:

The revising barrister shall, as part of the business of the revision, determine, if necessary, in respect of what area or areas any expenses or receipts are incurred or arise, and how much thereof is attributable to each area.

The remuneration of the revising barrister shall be paid as heretofore under the Parliamentary Registration Acts: Provided always, that in the case of a municipal borough whose burgess

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lists are revised under this Act, there shall be paid out of the borough fund to the revising barrister, by way of additional remuneration in respect of his additional work on account of the municipal revision for such municipal borough, a remuneration at the rate mentioned in the third section of the Municipal Corporation Act, 1859.

22 Vict. c. 35, s. 3.

The 31st section of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102) is as follows:—

The word "expenses" contained in the sections fifty-four and fifty-five of the said Registration Act of the session of the sixth year of the reign of Her present Majesty, chapter eighteen, shall be deemed to and shall include and apply to all proper and reasonable fees and charges of any clerk of the peace of any county, or of any town clerk of any city or borough, to be hereafter made or charged by him in any year for his trouble, care, and attention in the performance of the services and duties imposed upon him by the same Act or by this Act, in addition to any money actually paid or disbursed by him for or in respect of any such services or duties as aforesaid.

The remuneration of the barrister is fixed by 6 & 7 Vict. c. 18, s. 59, *ante*, and 37 & 38 Vict. c. 53, s. 1.

The 3rd section of the Municipal Corporation Act, 1859, fixed the remuneration of the barrister at the rate of five guineas per day over and above his travelling and other expenses. This Act was repealed by the Municipal Corporations Act, 1882; but the remuneration of the barrister must be paid according to the rate mentioned therein, and for that purpose the repealed enactment has still the force of law.

BLACKBURN, J.: "I agree that the repeal of the original Act does not of itself repeal provisions as incorporated in a subsequent Act." (*R.* v. *Smith and Others* (*JJ. of Lancashire*), L. R. 8 Q. B. 146.)

Delivery and custody of revised lists.

31. The lists, if made out in divisions under this Act, shall when revised be delivered to the town clerk to whom in respect of the area to which the lists relate revised parliamentary lists ought to be delivered.

The revising barrister shall as part of the business of the revision, at the request of the town clerk of any municipal borough, the whole or part of the area of which is co-extensive with or included in the area of a parliamentary borough, sign and deliver to him a duplicate of the whole or part of any revised list made out in divisions and relating to that municipal borough.

Every such duplicate shall be prepared by the town clerk at whose request it is so signed, and shall be kept by him for use for municipal purposes.

Sect. 32 relates only to the parliamentary register.

Commencement and

33. The burgess roll made up from revised lists under this Act of burgesses for any municipal borough shall come into

operation on the first day of November next after the revision, and shall continue in operation for the year commencing with such first day of November.

Sect. 33. duration of burgess roll.

Sect. 34 is repealed by the Municipal Corporations Act, 1882.

Appeal and correction of burgess roll where burgess lists are revised under this Act.

35. Where burgess lists are revised under this Act, the provisions of the Parliamentary Registration Acts as to appeal from the decision of the revising barrister shall apply to a decision on the revision of the burgess lists, and the provisions of the said Acts as to the alteration or correction of the register in pursuance of any judgment or order of the court of appeal shall apply to the alteration or correction of the burgess roll made up from the burgess lists as if it were a register of parliamentary voters, except that the notice of the judgment or order shall be given to the town clerk having the custody of the burgess roll, and the alteration or correction shall be made and signed by him.

Power for revising barrister to summon witnesses.

36. A revising barrister may by summons under his hand require any person to attend at the court and give evidence or produce documents for the purpose of the revision, and any person who after the tender to him of a reasonable amount for his expenses fails so to attend, or who fails to answer any question put to him by the revising barrister in pursuance of this section, or to produce any document which he is required in pursuance of this section to produce, shall be liable to pay such fine not exceeding five pounds as may be imposed by the revising barrister, and such fine may be recovered, and when recovered shall be applied in like manner as any other fine imposed by the revising barrister under the Parliamentary Registration Acts.

See 6 & 7 Vict. c. 18, s. 35, *ante*.

Appeal where revising barrister neglects or refuses to state case.

37. If any person feels aggrieved by a revising barrister neglecting or refusing to state any case, he may, within one month after such neglect or refusal, apply to the High Court of Justice upon affidavit of the facts for a rule calling on the revising barrister, and also on the person, if any, in whose favour the decision from which the applicant desires to appeal was given, to show cause why a rule should not be made directing the appeal to be entertained and the case to be stated, and there-

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upon the High Court, or any judge thereof in chambers, may make such rule to show cause, and make the same absolute, or discharge it with or without payment of costs as seems just, and the revising barrister on being served with any such rule absolute shall state the case accordingly, and the case shall be stated and the appeal entertained and heard, notwithstanding any limitations of time or place contained in the Parliamentary Registration Act, 1843.

6 & 7 Vict. c. 18.

As to the necessity of a notice in writing of "desire to appeal" under sect. 42 of 6 Vict. c. 18, being a condition precedent to a case being stated by a revising barrister, see *In re Bane and Others*, L. R. W. N. (1879) 200, *The Times*, December 10, 1879.

Costs of appeal.

38. The costs of an appellant against a decision of a revising barrister may, if the appeal is successful, be ordered by the court hearing the appeal to be paid by the clerk of the peace or town clerk named as respondent in the said appeal, whether he shall or shall not appear before the said court in support of the decision.

For enabling an appellant to obtain such an order he may at or before the time of making his declaration of appeal under section forty-two of the Parliamentary Registration Act, 1843, require the revising barrister to name the clerk of the peace for the county or the town clerk for the parliamentary borough or municipal borough, as the case may be, to which the appeal relates to be respondent in the appeal.

6 & 7 Vict. c. 18, s. 42.

The revising barrister if so required shall, and in any case may, name such clerk of the peace or town clerk, as the case may be, to be respondent in an appeal, either alone or in addition to any other person referred to in section forty-three of the Parliamentary Registration Act, 1843.

6 & 7 Vict. c. 18, s. 43.

The expenses properly incurred by a clerk of the peace or town clerk as respondent, including any costs which he may be ordered to pay to the appellant in any such appeal, shall be allowed to him as part of the expenses incurred by him in respect of the revision of the list to which the appeal relates. The term "expenses" in this section shall include all matters mentioned in section thirty-one of the Representation of the People Act, 1867.

30 & 31 Vict. c. 102, s. 31.

The costs of an appeal against a decision of a revising barrister shall be in the discretion of the court hearing the

appeal, subject, except as aforesaid, to the proviso contained in section seventy of the Parliamentary Registration Act, 1843.

Sect. 38. 6 & 7 Vict. c. 18, s. 70.

Power to make rules for proceedings at revision courts.

39. The authority having power to make rules for regulating the practice and procedure in Her Majesty's High Court of Justice may from time to time make, and when made alter and annul, rules for regulating the practice and procedure in the courts of revising barristers for the purposes of the Parliamentary Registration Acts and of this Act.

Rules to be laid before parliament.

All rules made under this section shall be laid before each house of parliament within forty days next after the same are made, if parliament is then sitting, and if not, within forty days after the beginning of the then next sitting of parliament, and if an address is presented to Her Majesty by either of the said houses within the next subsequent forty days on which the said house shall have sat praying that any such rule be annulled, Her Majesty may by order in council annul the same, and any rule so annulled shall thenceforth be of no effect, but without prejudice to the validity of any proceedings in the meantime taken thereunder.

All such rules shall while in force have effect as if enacted in this Act.

Service of notices. 6 & 7 Vict. c. 18, s. 101.

40. The provisions of section one hundred and one of the Parliamentary Electors Registration Act, 1843, as to the service of notices shall apply to the service of notices under this Act.

The term "notice" in the Parliamentary Registration Acts and this Act shall include any document required to be sent or delivered.

Sect. 41 is repealed by the Municipal Corporations Act, 1882.

Sects. 42 and 43 refer to registers in force at the commencement of the Act, and to the Universities of Oxford and Cambridge.

Appendix.

Schedule.

SCHEDULE.

Form (A.)

Form of Precept of the Town Clerk or other Officer issuing the Precept to the Overseers of any parish situate wholly or partly in a Parliamentary Borough, or in a Municipal Borough the whole or part of the area of which is co-extensive with or included in the area of a Parliamentary Borough.

† Parliamentary borough of †
* Municipal borough of*
to wit.

To the overseers of the poor of the parish of [*or* township of]

Omit part between crosses if no part of parish is in a parliamentary borough.

Omit part between asterisks if no part of parish is in a municipal borough.

In pursuance of the provisions of the Parliamentary and Municipal Registration Act, 1878, and the Acts therein referred to, I require your attention to the following

Instructions.

On or before the twentieth day of June you are to publish a notice [*or* notices], signed by you according to the form marked B. among the printed forms herewith sent.

Note.—Form B. in this schedule must be sent.

The manner in which you are required to publish that notice is as follows ; (that is to say), you are to fix one of the printed copies (each copy being first signed by you), on or near the outside of the outer door or of the outer wall near the door of every church and public chapel in your parish [or township], including chapels which do not belong to the Established Church, and also in some public and conspicuous position on or near every post office or telegraph office occupied by or on behalf of Her Majesty's Postmaster General, and every public or municipal or parochial office in your parish [*or* township], or if there is no such church, chapel, or office, then in some public situation in your parish [*or* township], and it must remain there during a period including two Sundays at the least.

Where any poor rate was on the first day of June due from an occupier in respect of any premises capable of conferring the franchise for the said † Parliamentary * or † municipal* borough, you are on or before the twentieth day of June to give to that occupier a notice in the form marked C. sent herewith, by delivering it to the occupier, or leaving it at his last or usual place of abode, or with some person on the premises in respect of which the rate is payable, and in case no

such person can be found, then by affixing the notice upon some conspicuous part of such premises. You need not give this notice if the rate has been previously duly demanded by a demand note served in the like manner as the last-mentioned notice.

Note.—Form C. in this schedule must be sent.

Omit part between crosses if no part of parish is in a parliamentary borough.

Omit part between asterisks if no part of parish is in a municipal borough.

On or before the twenty-second day of July next you are to make out a list containing the name and place of abode of every person who has not paid on or before the twentieth day of the same month all poor rates which have become due from him in respect of any premises within your parish [*or* township] before the fifth day of January last, and you are to keep that list to be perused by any person gratis at any time between 10 a.m. and 4 p.m. on any day, except Sunday, during the first fourteen days after the said twenty-second day of July.

When a borough rate is levied as a separate rate and not as part of the poor rate, the precept should be altered accordingly so as to contain a reference to the borough rate.

On or before the last day of July you are to make out a list of all persons †entitled under any right conferred by the Reform Act, 1832 (2 & 3 Will. 4, c. 45), or by section three of the Representation of the People Act, 1867, to be registered as parliamentary voters to vote at the election of a member [*or* members] to serve in Parliament for the parliamentary borough of in respect of the occupation of property situate wholly or partly within your parish [*or* township], *or† entitled to be enrolled as burgesses of the municipal borough of in respect of the occupation of property situate wholly or partly within your parish [or township.]*

Omit part between crosses if no part of parish is in a parliamentary borough.

Omit part between asterisks if no part of parish is in a municipal borough.

* This list is to be made out in three divisions :

Division One is to comprise the names of the persons entitled both to be registered as parliamentary voters under a right conferred as aforesaid, and to be enrolled as burgesses.

Division Two is to comprise the names of the persons entitled to be registered as parliamentary voters under a right conferred as aforesaid, but not to be enrolled as burgesses.

Division Three is to comprise the names of the persons entitled to be enrolled as burgesses, but not to be registered as parliamentary voters under a right conferred as aforesaid.*

Omit part between asterisks if no part of parish is in a municipal borough, or if no part of parish is in a parliamentary borough.

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† On or before the last day of July you are also to make out a list of all persons who are entitled within your parish [*or* township] to be registered as parliamentary voters to vote at the election of a member [*or* members] to serve in Parliament for the said parliamentary borough in respect of any other right than a right conferred by the Reform Act, 1832, or by section three of the Representation of the People Act, 1867 (except as freemen or as lodgers).

On or before the last day of July you are also to make out a list of all persons who being on the register of voters now in force for the said parliamentary borough in respect of residence in lodgings within your parish [*or* township] have duly claimed, on or before the twenty-fifth day of July, to have their names inserted in the lists of parliamentary voters for the said borough in respect of residence in the same lodgings.†

Omit part between crosses if no part of parish is in a parliamentary borough.

These lists are [*or* this list is] to be in the Form D. (*or*, as the case may be, E. *or* F.) sent herewith.

Note.—The appropriate form must be sent.

*On or before the last day of July you are also to make out a list (in the Form G. sent herewith) of all persons who are entitled, in respect of the occupation of property within your parish [*or* township], to be elected councillors or aldermen of the said municipal borough but who are not entitled to be on the burgess roll thereof.*

Omit part between asterisks if no part of parish is in a municipal borough, but unless it is omitted, send Form G.

In making out each of these lists you will follow the directions of which a copy is enclosed.

Note.—A printed copy of the directions in the schedule for the guidance of overseers in making out the lists must be enclosed.

On or before the first day of August you are to sign and publish written or printed copies of these lists, in the same manner as before mentioned with respect to the notice.

You are to keep a copy of these lists signed by you, † and also a copy of the list of defaulters in payment of assessed taxes sent to you by the collector of taxes,† to be open to public inspection at any time between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of any day, except Sunday, during the first fourteen days after the publication of the said lists, and to deliver copies of any such lists to any person on payment of a price for each copy after the rate contained in the table marked "Parliamentary Registration Act, 1843, Schedule (D.), No. 1," sent herewith.

Omit part between crosses if no part of parish is in a parliamentary borough.

Note.—A printed copy of the Table No. 1 in schedule (D.) to the Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), must be enclosed.

You are to make out lists according to the forms marked K. sent herewith, containing the names of every person who has given or caused to be given to you, or any one of you, on or before the twenty-fifth day of August, notice of his claim to have his name inserted in any list of voters making separate lists of—

(1.) Persons claiming to be entered in the lists of parliamentary voters otherwise than as freemen or lodgers ; and

(2.) Persons claiming to be entered in the lists of parliamentary voters as lodgers who are not comprised in the above-mentioned list of lodger voters ; *and

(3.) Persons claiming to be entered in the burgess lists.*

Omit part between asterisks if no part of parish is in a municipal borough.

You are also to make out lists according to the forms marked L. sent herewith, containing the names of every person against whom a notice of objection has been given to you, or any of you, on or before the twenty-fifth day of August, as not being entitled to have his name retained in any list for your parish [*or* township], giving in separate lists the objections made to—

(1.) Any person on the list of parliamentary voters other than the above-mentioned list of lodger voters :

(2.) Any person on the above-mentioned list of lodger voters :

(3.) Any person on the burgess list.

Omit part between asterisks if no part of parish is in a municipal borough.

Note.—Forms marked K and L must be sent.

On or before the twenty-ninth day of August you are to deliver to me copies of the lists so respectively made out and signed by you as aforesaid.

On or before the first day of September you are to sign and publish each of the lists of claimants and persons objected to in the same manner as before mentioned with respect to the notice.

You are to keep a copy of each of the lists of claimants and persons objected to, signed by you, and these copies, and also the original notices of claims and of objections, are to be open to public inspection at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days of September, and you are to deliver copies of each of these lists to any person on payment of a price for each copy after the rate contained in the table marked "Parliamentary Registration Act, 1843, Schedule (D.), No. 1," sent herewith.

If you find any such notice, list, or other document published by you as aforesaid to be destroyed, mutilated, effaced, or removed, you are forthwith to place another in its room to the same effect.

You are to attend at the court to be holden for the revision of the

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said lists, of the time of holding which notice will be given; and at the opening of the court you are there to deliver to the barrister before whom the same is holden the several lists made out and signed by you, and the original notices of claims and objections given to you.

Herein if you fail you will be liable to the penalties in that case provided.

Dated the day of 18 .

(Signed) *A.B.*,
Town Clerk of the Municipal Borough of .

If the officer issuing precept is not the town clerk of a municipal borough, he should append to his signature his proper official description.

FORM B.

Notice to be published by the Overseers in a Parliamentary Borough.

Parliamentary borough of , to wit. } We hereby give notice that no person will be entitled to have his name inserted in any list of parliamentary voters for the parliamentary borough of , now about to be made in respect of the occupation of any property situate wholly or partly within this parish [*or* township] unless he pays on or before the twentieth day of July all the poor rates which have become due from him in respect of those premises up to the fifth day of January last past; or to have his name inserted in any such list under any right conferred by the Reform Act, 1832, in respect of the occupation of any property situate as aforesaid, unless he pays on or before the twentieth day of July all assessed taxes which have become due from him in respect of those premises up to the fifth day of January last past; and all persons who omit to make such payments will be incapable of being upon the next register of parliamentary voters for this borough in respect of those premises.

Dated the day of June, 18 .

(Signed) *A.B.* } Overseers of the parish [*or* township]
C.D. } of .

Notice to be published by the Overseers in a Municipal Borough.

Municipal borough of , to wit. } We hereby give notice that no person will be entitled to have his name inserted in any list of burgesses of the municipal borough of , now about to be made in respect of the occupation of any property situate

wholly or partly within this parish [*or* township], unless he pays on or before the twentieth day of July all poor rates and borough rates (if any) which have become due from him in respect of those premises up to the fifth day of January last past; and all persons who omit to make such payment will be incapable of being upon the next burgess roll for this borough in respect of those premises.

Dated the day of June, 18 .

(Signed) *A.B.* } Overseers of the parish [*or* town-
C.D. } ship] of .

NOTE.—Where a parish is situate within both a parliamentary borough and a municipal borough, both the above notices must be issued.

Note.—This form is to be used only where the whole or part of the area of the municipal borough is co-extensive with or included in the area of a parliamentary borough.

FORM (C.)

To *A.B.*

† Parliamentary borough of †

* Municipal borough of *

Take notice that you will not be entitled to have your name inserted †in the list of parliamentary voters for the parliamentary borough of * or †in the burgess lists for the municipal borough of * now about to be made in respect of the premises in your occupation in [*street or place*], unless you pay on or before the twentieth day of July next all the poor rates* (including borough rates, if any)* due from you in respect of those premises up to the fifth day of January last, amounting to £ , and if you omit to make such payment you will be incapable of being on the next † register of parliamentary voters for the said parliamentary borough * or †burgess roll for the said municipal borough.*

Dated the day of June, 18 .

(Signed) *C.D.* } Overseers,
E.F. }

or

G.H., Assistant Overseer,

or

I.K., Collector

of the Parish [*or* Township] of .

Note.—This form is to be used in every parliamentary borough, but only in a municipal borough the whole or part of the area of which is co-extensive with or included in the area of a parliamentary borough.

If no part of the parish is in a parliamentary borough the parts between crosses are to be omitted.

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If no part of the parish is in a municipal borough the parts between asterisks are to be omitted.

Where a borough rate is levied as a separate rate and not as part of the poor rate, the form should be altered accordingly, so as to distinguish the borough rate from the poor rate, and to state that omission to pay the borough rate will disqualify for enrolment as a burgess.

FORM (D.)

Form of Lists of Parliamentary Voters and Burgesses for a Parish wholly or partly situate both in a Parliamentary Borough and in a Municipal Borough.

No. 1.—LIST OF

† The persons entitled under any right conferred by the Reform Act, 1832, or by section three of the Representation of the People Act, 1867, to be registered as parliamentary voters to vote at the election of a member [*or* members] to serve in Parliament for the parliamentary borough of in respect of the occupation of property situate wholly or partly within this parish [*or* township],* and † the persons entitled to be enrolled as burgesses for the municipal borough of in respect of the occupation of property situate wholly or partly within this parish [*or* township]*.

Division One. Persons entitled both to be Registered as Parliamentary Voters under a right conferred as aforesaid, and to be Enrolled as Burgesses.

1. Names of Voters in full, Surname being first.	2. Place of Abode.	3. Nature of Qualification.	4. Name and Situation of Qualifying Property.
Abrahams, Samuel	4, Brick Street	House (joint) -	4, Brick Street.
Brown, Thomas -	4, Brick Street	Shop - -	4, Brick Street.
Masters, Abel - -	1, Brick Street	House - -	1, Brick Street.
Smith, William -	Wood Villa, Gainsborough	Building - -	2, Brick Street.

Division Two. Persons entitled to be Registered as Parliamentary Voters under a right conferred as aforesaid, but not to be Enrolled as Burgesses.

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.
Adams, John - -	24, Duke Street	House - -	7, Brick Street.
Stubbs, Thomas -	10, High Street	Shop - -	4, Brick Street.

Division Three. Persons entitled to be Enrolled as Burgesses, but not to be Registered as Parliamentary Voters under a right conferred as aforesaid.

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.
Gardener, Mary -	10, Brick Street	House - -	10, Brick Street.
Thompson, Henry -	14, John Street	Warehouse -	3, Brick Street.

(Signed) *A.B.* } Overseers of the Parish [*or*
C.D. } Township] of .

N.B.—This list (No. 1) does not contain the names of any parliamentary voters except those entitled under some right conferred by the Reform Act, 1832, or by sect. 3 of the Representation of the People Act, 1867.

No. 2.—LIST OF

The persons entitled to be registered as parliamentary voters to vote at the election of a member [*or* members] to serve in Parliament for the parliamentary borough of in respect of any other right than a right conferred by the Reform Act, 1832, or by section 3

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of the Representation of the People Act, 1867 (except as freemen or as lodgers).

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property (if any).
Smith, John - -	15, Brick Street	Inhabitant householder, paying scot and lot.	

(Signed) *A.B.* } Overseers of the Parish [*or*
C.D. } Township] of .

No. 3.—List of

The persons who being on the register of voters now in force for the parliamentary borough of in respect of residence in lodgings within the parish [*or* township] of claim, in respect of residence in the same lodgings, to have their names inserted in the list of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the said borough.

Names of Claimants in full, Surname being first.	Description of Rooms occupied and whether Furnished or not.	Street, Lane, or other Place, and Number, if any, of House in which Lodgings are situate.	Amount of Rent paid.	Name and Address of Landlord or other Person to whom Rent is paid.	Objections by Overseers.

(Signed) *A.B.* } Overseers of the Parish [*or*
C.D. } Township] of .

Form (E.)

This form refers only to parliamentary voters, and is omitted.

FORM (F.)

Form of List of Burgesses for a Parish wholly or partly situate in a Municipal Borough, but not in a Parliamentary Borough.

This form is to be the same as Form (D.), No. 1, omitting the parts between crosses, and omitting the words "*Division One. Persons entitled,*" *&c.*, forming the heading of Division One, and omitting Divisions Two and Three.

Note.—This form is to be used only where the whole or part of the area of the municipal borough is co-extensive with or included in the area of a parliamentary borough.

FORM (G.)

Form of List of Occupiers in any Parish entitled to be elected Councillors or Aldermen of a Municipal Borough, though not entitled to be on the Burgess Roll of that Borough.

List of the persons who are entitled to be elected councillors or aldermen of the municipal borough of in respect of the occupation within the parish [*or* township] of of any property, but who are not entitled to be on the burgess roll of that borough.

1. Names of Persons in full, Surname being first.	2. Place of Abode.	3. Nature of Qualification.	4. Name and Situation of Qualifying Property.

(Signed) *A.B.* } Overseers of the Parish
C.D. } [*or* Township] of .

Note.—This form is to be used only where the whole or part of the area of the municipal borough is co-extensive with or included in the area of a parliamentary borough.

Appendix.

Schedule.

FORM (H.)

Form of Notice of Claim.

Nos. 1 and 2 are omitted, as they relate only to the parliamentary franchise.

No. 3 (MUNICIPAL).

To the overseers of the parish [*or* township] of .

I claim to have my name inserted in the list made by you of burgesses of the municipal borough of in respect of the qualification named below.

Dated the day of 18 .

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.

(Signed) *A.B.*

Note.—This form is to be used only where the whole or part of the area of the municipal borough is co-extensive with or included in the area of a parliamentary borough.

FORM (I.)

Form of Notice of Objection.

Nos. 1 and 2 are omitted, as they relate only to the parliamentary franchise.

No. 3 (MUNICIPAL).

Notice of Objection to be given to Overseers.

To the overseers of the parish [*or* township] of

I hereby give you notice that I object to the name of being retained on the list of burgesses of the municipal borough of .

Dated the day of 18 .

(Signed) *A.B.*, of [*place of abode*], on the list of burgesses for the parish of .

Note.—This form is to be used only where the whole or part of the area of the municipal borough is co-extensive with or included in the area of a parliamentary borough.

No. 4 (MUNICIPAL).

Notice of Objection to be given to Person objected to.

To Mr.

I hereby give you notice that I object to your name being retained on the lists of burgesses of the municipal borough of , on the following grounds, viz. :—

1. *e.g.* that you have not occupied for twelve months to July 15th.
2. That
3.

Dated the day of 18 .

(Signed) *A.B.*, of [*place of abode*], on the list of burgesses for the parish of .

Note.—If there is more that one burgess list the notice of objection in each of the above two cases, Nos. 3 and 4, should specify the list to which the objection refers, and if the list is made out in divisions, the notice of objection should specify the division to which the objection refers ; and if the list contains two or more persons of the same name, the notice should distinguish the person intended to be objected to.

This form is to be used only where the whole or part of the area of the municipal borough is co-extensive with or included in the area of a parliamentary borough.

In the case *Hall* v. *Cropper*, 5 C. P. D. 73, the notice of objection did not specify the list for any particular parish, as the list on which the name objected to would be found, but merely referred to the list of persons entitled to vote for the borough generally. The revising barrister decided that the notice was bad, for not specifying the particular parish list. The court reversed his decision. (*See* also *Mortlock* v *Farrer*, L. R. 5 C. P. D. 73, and notes on these cases in Saint's Registration Cases, p. 279.)

Appendix, Schedule.

FORM (K.)

Nos. 1 and 2 are omitted, as they relate only to the parliamentary franchise.

No. 3.—LIST OF CLAIMANTS (MUNICIPAL).

The following persons claim to have their names inserted in the Burgess Roll for the municipal borough of .

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.

(Signed) *A.B.* } Overseers of the Parish [*or*
C.D. } Township] of .

Note.—This form is to be used only where the whole or part of the area of the municipal borough is co-extensive with or included in a parliamentary borough.

FORM (L.)

Nos. 1 and 2 are omitted, as they relate only to the parliamentary franchise.

No. 3.—LIST OF PERSONS OBJECTED TO (MUNICIPAL).

The following persons have been objected to as not being entitled to have their names retained on the Burgess Lists for the municipal borough of .

Name of Person objected to in full, Surname being first.	Place of Abode.	Nature of the supposed Qualification.	Name and Situation of Qualifying Property.

(Signed) *A.B.* } Overseers of the Parish [*or*
C.D. } Township] of .

Note.—This form is to be used only where the whole or part of the area of the municipal borough is co-extensive with or included in a parliamentary borough.

FORM (M.)

Declaration for correcting misdescription in List.

I, of No. in the parish of in the parliamentary borough of , and in the municipal borough of [*as the case may be*], do solemnly and sincerely declare as follows :—

1. I am the person referred to in division of the list of parliamentary voters and burgesses made out in divisions [or in the list of] (*specifying the particular list*) made out for the parish of , by an entry as follows :—

Name as described in List.	Place of Abode as described in List.	Nature of Qualification as described in List.	Name and Situation of Qualifying Property.
Brown, John -	High Street -	Shop - -	2, Shire Lane.

2. My correct name and place of abode, and the correct particulars respecting my qualification, are, and ought to be stated for the purposes of the register about to be made up of voters for the parliamentary borough of , and the burgess roll about to be made up of burgesses for the municipal borough of (*as the case may be*), as follows :—

Correct Name.	Correct place of Abode.	Correct nature of Qualification.	Correct Name and Situation of Qualifying Property.
Brown, Joseph -	15, High Street -	House - -	24, Shire Lane.

Dated this day of 18 .

(Signed)

Made and subscribed before me this day of 18 ,

A.B.,
Justice of the Peace for .

The person before whom the declaration is made should affix his official description.

Appendix.

Schedule.

FORM (N.)

NOTICE OF WITHDRAWAL OF OBJECTION.

No. 1.—Notice to the person objected to.

To Mr.

I hereby give you notice that I withdraw my objection to your name being retained on the list of † so far as regards the ground of objection numbered in my notice to you of such objection.†

Dated the day of 18 .

(Signed)

The list should be referred to in the manner prescribed for the notice of objection.

Omit the words between crosses if the objection is wholly withdrawn.

The notice should be signed in the manner prescribed for the notice of objection.

No. 2.—Notice to the Town Clerk.

To the Town Clerk of

I hereby give you notice that I withdraw my objection to the name of being retained on the list of † so far as regards the ground of objection numbered in my notice to him of such objection.†

Dated the day of 18 .

(Signed)

The list should be referred to in the manner prescribed for the notice of objection.

Omit the words between crosses if the objection is wholly withdrawn.

The notice should be signed in the manner prescribed for the notice of objection.

FORM (O.)

NOTICE OF REVIVING AN OBJECTION.

No. 1.—Notice to the person objected to.

To Mr.

I hereby give you notice that I revive the objection which was made by , since deceased, to your name being retained on the list of † so far as regards the ground of objection numbered in the notice to you of such objection.†

Dated the day of 18 .

(Signed)

The list should be referred to in the manner prescribed for the notice of objection.

Omit the words between crosses if the objection is wholly revived.

The notice should be signed in the manner prescribed for the notice of objection.

No. 2.—Notice to the Town Clerk.

To the Town Clerk of

I hereby give you notice that I revive the objection which was made by , since deceased, to the name of being retained on the list of † so far as regards the ground of objection numbered in the notice to the person objected to of such objection.†

Dated the day of 18 .

(Signed)

The list should be referred to in the manner prescribed for the notice of objection.

Omit the words between crosses if the objection is wholly revived.

The notice should be signed in the manner prescribed for the notice of objection.

NOTE (P.)

Directions for the Guidance of Overseers in making out the Lists.

The following directions should be observed by overseers in making out the lists of parliamentary voters and burgesses, and also the lists of claimants and persons objected to as parliamentary voters and burgesses.

(1.) The surname and other name or names of each person are to be written at full length, the surname being placed first.

(2.) Each list, and where the list is made out in divisions, each division of each list should be made out in alphabetical order.

Note.—If the local authority has given any special directions as to the mode of making out the list, the town clerk, or other officer issuing the precepts, must modify direction (2) accordingly.

(3.) The place of abode should be entered, with the name of the street, lane, or other locality, and the number in such street, lane, or other locality of such place of abode, where there is any such name or number, and should be entered in all cases in such a manner as will afford a full and sufficient address for a person entered if a letter is addressed to him by post.

(4.) The nature of the qualification should be entered as nearly as possible in the words of the statute conferring the franchise, for instance :—

(*a*) The nature of the qualification of a person under the Reform Act, 1832 (2 & 3 Will. 4, c. 45), or under the Municipal Corporation Acts, should be stated thus : "house," or in the case of a joint occupation, "house (joint)," or "warehouse," "counting-house," "shop," or "building," or in the manner provided by the Parliamentary and Municipal Registration Act, 1878, as the case may be :

Appendix. Schedule.

(*b*) The nature of the qualification of a person under section 3 of the Representation of the People Act, 1867, should be stated thus, "dwelling-house."

(5.) The name and situation of the qualifying property, if the qualification is in respect of property, should be entered with the name of the street, lane, or other locality, and the number in such street, lane, or other locality of such property, where there is any such name or number, and should be entered in all cases in such a manner as will afford full and sufficient means of identifying such property.

(6.) Where several qualifications are possessed by the same person, the particulars respecting each qualification should be stated in the list; and in the case of a list made out in divisions, where a person is entered in Division 1 in respect of one qualification for parliamentary purposes, and in respect of another qualification for municipal purposes, each such qualification should be distinguished in the list by a note to the effect that the qualification is for parliamentary purposes only, or for municipal purposes only, as the case may be.

(7.) In making out the list of lodger claimants who claim on or before the twenty-fifth day of July, and are then on the register in respect of the same lodgings, if you have reason to believe that any person whose name is entered on that list is dead, or is not entitled to vote, you should make a note to that effect in the last column of the list, being the column headed "objections by overseers."

(8.) You should omit from any list of parliamentary voters or burgesses the name of any person who appears from the returns furnished by the registrar of births and deaths to be dead, and the name of any person who is ascertained to be disqualified for being inserted in the list by reason of having received parochial relief or other alms.

Note (Q.)

Directions for Guidance in the formation of the Parliamentary Register and Burgess Roll.

In copying and printing Divisions 1 and 2 for the parliamentary register, and Divisions 1 and 3 for the burgess roll, of any revised list made out in divisions under this Act, the two divisions in each set may, and, if and so far as the local authority under the Act shall so direct, shall be combined or kept separate, and be arranged according to convenience for use in parts for polling districts or wards, and where the polling districts and wards are not conterminous in such manner that the parts may be conveniently compiled or put together to serve either as lists for polling districts or as ward lists; and the names may, and, if and so far as the said local authority

shall so direct, shall be distinguished by a number, either alone, or in combination with a letter or other distinguishing mark according to the parts, and any arrangement may, and, if and so far as the said local authority shall so direct, shall be adopted according to convenience, so that one print or edition of Division 1 may be available for both sets.

Each entry for voting on the parliamentary register of every parliamentary borough, and on the burgess roll of every municipal borough whose burgess lists are revised under this Act, is to be distinguished by a number, either alone or in combination with a letter or distinguishing mark.

Any entry of a person not entitled to vote in respect of the qualification therein contained, he being on the list for voting in respect of another qualification, is to be denoted by an asterisk in the manner provided by section forty-seven of the Parliamentary Registration Act, 1843, with respect to similar entries in the registers for counties.

The officer having the custody of any revised lists under this Act shall permit access thereto for the purpose of the same being copied for the parliamentary register of the parliamentary borough, and for the burgess roll of any municipal borough to which such revised lists relate.

THE BALLOT ACT, 1872.

(35 & 36 VICT. CAP. 33.)

An Act to amend the Law relating to Procedure at Parliamentary and Municipal Elections.

[18th July, 1872.]

WHEREAS it is expedient to amend the law relating to procedure at parliamentary and municipal elections:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

PARLIAMENTARY ELECTIONS.

Procedure at Elections.

Sect. 1 relates only to candidates at parliamentary elections.

Poll at elections.

2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given [*and return their names to the clerk of the crown in chancery*]. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

* * * * * *

The duty is imposed upon the presiding officer to deliver to the voters voting papers bearing the official mark, and to be present during the election at the polling stations, so that the voters, before depositing their voting papers in the ballot box, can show to him the official mark on the back thereof. These duties are merely ministerial, and an action will lie against the presiding officer for any negligent performance thereof by a party aggrieved, although the breach thereof be not wilful or malicious.

The presiding officer may do, by the clerks appointed to assist him, many acts which he is required to do under this Act. Where a clerk is so appointed, the presiding officer will not be responsible for the acts of commission or omission of such clerk in the performance of the duties delegated to him, as the relation of master and servant does not exist between them. Each is an independent officer.

The Act does not impose upon the presiding officer the duty of ascertaining, before the voter deposits a voting paper in the ballot box, whether the official mark is on such paper. Per BOVILL, C. J., and GROVE, J. (*Pickering* v. *James*, L. R. 8 C. P. 489; 42 L. J. C. P. 217; 29 L. T. (N.S.) 211.)

Where a returning officer had neglected to mark on the counterfoil the number of the voter on the register in a municipal election, the petition under the repealed Corrupt Practices (Municipal Elections) Act, 1872, was allowed to be amended by adding a paragraph alleging this fact. (*Pickering* v. *Startin*, 28 L. T. (N.S) 111.)

If the returning officer mark the number of the voter in the register on the ballot paper instead of on the counterfoil, the ballot paper is void. (*Woodward* v. *Sarsons*, L. R. 10 C. P. 733; 44 L. J. C. P. 293; 33 L. T. (N.S.) 867.)

As to what marks made by a voter will and what marks will not vitiate a ballot paper, *see* the Third Division of this work, p. 322, and notes on Form K., Eighth Schedule, Part II., of the Municipal Corporations Act, 1882, p. 264.

There is no return to the clerk of the crown in municipal elections. (Municipal Corporations Act, 1882, Third Schedule, Part III., 6.) All

Appendix.

Note s. 2.

documents which in the case of a parliamentary election are to be forwarded to the clerk of the crown are to be delivered to the town clerk. (*See* Part II. of this Act.)

The last provision of this section relates to the voting of a returning officer, and is omitted as it applies only to a parliamentary election. The provision relating to a presiding officer at a municipal election will be found in sect. 58 (5) of the Municipal Corporations Act, 1882.

Offences at Elections.

Offences in respect of nomination papers, ballot papers, and ballot boxes

3. Every person who,—

(1.) Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged; or

(2.) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or

(3.) Without due authority supplies any ballot paper to any person; or

(4.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or

(5.) Fraudulently takes out of the polling station any ballot paper; or

(6.) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

Appendix.

Note s. 3.

The offences in relation to nomination papers are punishable under sect. 74 of the Municipal Corporations Act, 1882.

A returning officer was indicted with having fraudulently placed papers, purporting to be ballot papers, but known to such returning officer not to be ballot papers, into the ballot box. At the trial BLACKBURN, J., allowed the counterfoils and marked register to be given in evidence, and the face of the voting papers to be inspected, so as to show how the votes appeared to have been given. A county court judge, under Rule 64, Part II. of the First Schedule of this Act, had made an order directing the town clerk to produce and show, for the purposes of the prosecution, the counterfoils and the marked register. The court *held* that this was rightly done, and that they were properly admitted in evidence at the trial. (*R.* v. *Beardsall*, L. R. 1 Q. B. D. 452; 45 L. J. M. C. 157.)

The *mens rea* is necessary to constitute any offence charged under this section. (See *Aberdare Local Board of Health* v. *Hammett*, L. R. 10 Q. B. 162.)

Infringement of secrecy.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

Appendix.

Notes ss. 4-7

An information was laid against an agent in attendance at the polling station at a municipal election for a breach of this section. The defendant had a copy of the burgess roll, and whilst in the station placed a mark against the name of each voter who obtained a ballot paper, and before the poll closed left the station, and carried to the committee room of his principal his marked copy of the burgess roll, and left it there. There was no proof that the copy of the burgess roll was seen by any person whilst in the room. *Held*, that there was not sufficient evidence to convict in the absence of proof that information as to the voters was actually communicated to any person, and it was not enough that the means of acquiring such information were afforded to any one. (*Stannanought* v. *Hazeldine*, L. R. 4 C. P. D. 191.)

Can the various offences named in this section be included in one information under 11 & 12 Vict. c. 43? The point was raised, but not decided in the last-mentioned case.

Sect. 5 relates to the division of counties and boroughs into polling districts.

By sect. 46 of the Municipal Corporations Act, 1882, the council may divide the borough or any ward into polling districts.

Sect. 6 authorizes the free use of school and public rooms for taking the poll at a parliamentary election.

By the Municipal Corporations Act, 1882, Third Schedule, Part III. (1), the provisions of this Act, with respect to the use of a room for taking the poll, do not apply to a municipal election.

By sect. 69 of the Municipal Corporations Act, 1882, an election cannot be held in any place of public worship.

Sect. 7 makes the register of voters conclusive. By the Municipal Corporations Act, 1882, Third Schedule, Part III. (1), the provisions of this Act, with respect to the right to vote of persons whose names are on the register of voters, do not apply to a municipal election. As to the title to vote of any burgess, *see* sect. 51 of the Municipal Corporations Act, 1882.

Duties of Returning and Election Officers.

General powers and duties of returning officer.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act.

* * * * *

The mayor and the town clerk have to provide these things at a municipal election. (*See* Municipal Corporations Act, 1882, Third Schedule, Part III. (3) and the same schedule, Part II. (6). *See* the Third Division of this work on the Practice at Municipal Elections.)

Keeping of order in station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorized in writing by the returning officer to remove him; and the person so removed shall not, unless

with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

Powers of presiding officer and administration of oaths, &c.

10. For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorized by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorized by this Act to be taken before him.

The oath authorized by law is prescribed by 6 Vict. c. 18, s. 81. As to the administration of this oath at municipal elections, *see* Division III. pp. 285, 286.

Liability of officers for misconduct.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds.

30 & 31 Vict. c. 102.

Section fifty of the Representation of the People Act, 1867 (which relates to the acting of any returning officer, or his partner or clerk, as agent for a candidate), shall apply to any returning officer or officer appointed by him in pursuance of this Act, and to his partner or clerk.

Where a clerk commits a breach of duty he is personally liable in an action for damages. (See *Pickering* v. *James*, L. R. 8 C. P. 489, and note to sect. 2, *ante*.)

Miscellaneous.

Sect. 12 relates to the disclosure of the way in which a person has voted. The Municipal Corporations Act, 1882, s. 104, provides, that no person in any proceeding to question an election, shall be required to state for whom he has voted.

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Sect. 13. Non-compliance with rules.

13. No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

See also sect. 72 of the Municipal Corporations Act, 1882, and the cases of *Woodward* v. *Sarsons*, L. R. 10 C. P. 733; 32 L. T. (N.S) 867; and *Northcote* v. *Pulsford*, L. R. 10 C. P 476; 32 L. T. (N.S) 602, referred to in the notes thereon. As to a misstatement of the number on the burgess roll in a nomination paper, see *Gothard* v. *Clarke*, L. R. 5 C. P. D. 253, quoted at p. 263, *ante*.

In a recent case of a municipal election in Scotland, the presiding officer marked the electors' number on the register on about one-third of the total ballot papers issued as well as on the counterfoils. It was not proved that any one was thereby deterred from voting, and the irregularity was stopped as soon as it was pointed out. The same candidates were successful whether the ballot papers so marked were counted or not; but the order in which they stood differed according to the alternative adopted, and the order in which the councillors fell to retire might, in certain possible circumstances, come to depend on the order in which they had stood at the election. *Held*, that the voting papers marked as aforesaid were invalidated, but that the circumstances were not sufficient to avoid the election. At the same election the returning officer committed serious irregularities in violation of the rules of the Ballot Act during the counting of the votes, and in dealing with the voting papers afterwards, in consequence of which the votes of electors might have been disclosed; but there was no evidence of systematic violation of the principle of secret voting, and the result of the election was not affected by the irregularities. The Court being of opinion that the election had been, notwithstanding the irregularities, conducted in accordance with the principles of the Act, *held* that there was no ground for avoiding the election. (*Deans* v. *The Magistrates of Haddington*, 9 Court of Sessions' Cases, 4th series, p. 1077.)

Use of municipal ballot boxes, &c., for parliamentary election, and *vice versâ*.

14. Where a parliamentary borough and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such parliamentary borough or such municipal borough may be used in any municipal or parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.

As to the use of the boxes, &c., at a parliamentary election, *see* further, sect. 6 of 38 & 39 Vict. c. 84.

Construction of Act.

15. This part of this Act shall, so far as is consistent with the tenor thereof, be construed as one with the enactments for

the time being in force relating to the representation of the people, and to the registration of persons entitled to vote at the election of members to serve in Parliament, and with any enactments otherwise relating to the subject matter of this part of this Act, and terms used in this part of this Act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this Act shall for the purposes of the said enactments be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this Act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this Act, or expressions relative thereto, shall be equivalent to "voting" in the said enactments and any expressions relative thereto; and the term "polling booth" as used in the said enactments shall be deemed to include a polling station; and the term "proclamation" as used in the said enactments shall be deemed to include a public notice given in pursuance of this Act.

Sect. 16 relates only to Scotland.
Sects. 17, 18 and 19 relate only to Ireland.

PART II.

Municipal Elections.

Sect. 20 is repealed by the Municipal Corporations Act, 1882, First Schedule, Part I. The provisions in lieu thereof will be found in Part III. of the Third Schedule of that Act.

Sect. 21 is repealed by the Municipal Corporations Act, 1882, First Schedule, Part I. The substituted provisions will be found in sects. 29 and 62 of that Act.

Sects. 22 and 23 relate only to Scotland and Ireland.

PART III.

Personation.

24. The following enactments shall be made with respect to personation at parliamentary and municipal elections:

Definition and punishment of personation.

A person shall for all purposes of the laws relating to parlia-

Appendix.

Section 24.

mentary and municipal elections be deemed to be guilty of the offence of personation who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

The offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, shall be a felony, and any person convicted thereof shall be punished by imprisonment for a term not exceeding two years, together with hard labour. It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

The provisions of the Registration Acts, specified in the Third Schedule to this Act, shall in England and Ireland respectively apply to personation under this Act in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Acts.

The offence of personation shall be deemed to be a corrupt practice within the meaning of the Parliamentary Elections Act, 1868.

* * * * *

The part omitted relates only to the trial of parliamentary election petitions.

The provisions of the Registration Acts will be found *ante* (6 & 7 Vict. c. 18. ss. 85-89).

The provisions for the time being in force for the detection of personation, and for the apprehension of persons charged with personation, at a parliamentary election are to apply in the case of a municipal election. (*See* sect. 86 of the Municipal Corporations Act, 1882.)

As to corrupt practices within the meaning of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), see *post*.

Sect. 25 relates to votes that may be struck off on a scrutiny on the trial of a parliamentary election petition. The 85th section of the Municipal Corporations Act, 1882, provides that the votes of persons of whom any corrupt practice is proved, at a municipal election, may be struck off on a scrutiny.

The vote can only be struck off when the voter has acted corruptly. (See *In re Boston Election Petition, Malcolm* v. *Parry and Ingram*, L. R. 9 C. P. 610.)

Sect. 26 relates only to Scotland.

Construction of part of Act.

27. This part of this Act, so far as regards parliamentary elections, shall be construed as one with "The Parliamentary Elections Act, 1868," and shall apply to an election for a university or combination of universities.

PART IV.

MISCELLANEOUS.

Effect of schedules.

28. The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act.

Definitions.

29. In this Act—

"Municipal borough."

The expression "municipal borough" means any place for the time being subject to the Municipal Corporation Acts, or any of them:

"Municipal corporation Acts."

The expression "Municipal Corporation Acts" means—

(*a.*) As regards England, the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same.

* * * * *

The expression "municipal election" means—

(*a.*) As regards England, an election of any person to serve the office of councillor, auditor, or assessor of any muninicipal borough, or of councillor for a ward of a municipal borough.

* * * * *

The paragraphs omitted relate only to Scotland and Ireland.

Application of Act.

30. This Act shall apply to any parliamentary or municipal election which may be held after the passing thereof.

Sect. 31 relates only to an election for a university.

Sect. 32 repeals the statutes mentioned in the schedules to the extent therein mentioned.

Sect. 33 provides a short title for the Act, namely, "The Ballot Act, 1872," and relates to the time it shall continue in force. By 45 & 46 Vict. c. 64, the time is extended to the end of 1883.

Appendix.
Schedules.

SCHEDULES.

FIRST SCHEDULE.

PART I.

RULES FOR PARLIAMENTARY ELECTIONS.

Rules 1 to 13 are omitted, as they relate to nominations at parliamentary elections only.

The Poll.

Rule 14 does not apply to municipal elections.

The poll.

15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient, provided that in a district borough there shall be at least one polling station at each contributory place of such borough.

See note on sect. 8 of this Act, and Division III. p. 290.

Rule 16 does not apply to a municipal election. (*See* the Municipal Corporations Act, 1882, Third Schedule, Part III.)

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

Rule 19 does not apply to a municipal election. (*See* the Municipal Corporations Act, 1882, Third Schedule, Part III.)

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same county or borough.

In a municipal election the duty assigned to a returning officer by this rule devolves on the mayor, and, in practice, is discharged by the town clerk, or his deputy.

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

The mayor makes these appointments at a municipal election.
The candidate at a municipal election has a right of entry to the station. (See *Clementson* v. *Mason*, L. R. 10 C. P. 209.)

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names : it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

The presiding officer is *primâ facie* the proper person to see the ballot paper duly marked with the official mark. (See *Pickering* v. *James*, L. R. 8 C. P. 489; 42 L. J. C. P. 217.)

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box ; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in

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manner prescribed by this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called the tendered votes list.

The form of oath will be found in Division III. p. 285. The questions will be found in sect. 59 of the Municipal Corporations Act, 1882, p. 97.

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the

candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

(1.) Each ballot box in use at his station, unopened, but with the key attached; and

(2.) The unused and spoilt ballot papers, placed together; and

(3.) The tendered ballot papers; and

(4.) The marked copies of the register of voters, and the counterfoils of the ballot papers; and

(5.) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

and shall deliver such packets to the returning officer.

The marked copies of the register of voters should be enclosed in a separate packet, and the counterfoils of the ballot papers in a second separate packet, and then both these separate packets should be enclosed in a third separate packet. (See *In re Petersfield Election Petition, Stowe* v. *Jolliffe*, L. R. 9 C. D. 446.)

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting Votes.

Counting votes.

31. The candidates may respectively appoint agents to attend the counting of the votes.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

34. Before the returning officer proceeds to count the votes, he shall in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while

counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report [*to the clerk of the crown in chancery*] the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark ;
2. Voting for more candidates than entitled to ;
3. Writing or mark by which voter could be identified ;
4. Unmarked or void for uncertainty ;

and shall on request allow any agents of the candidates, before such report is sent, to copy it.

No return is to be made to the clerk of the crown in a municipal election. (*See* Municipal Corporations Act, 1882, Schedule 3, Part III. (6). *See* Schedule 1. Part II. (*b*) of this Act.) Documents which, in the case of a parliamentary election are to be forwarded to the clerk of the crown, are to be delivered to the town clerk in a municipal election. (*See* Part II. of this Act.)

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall re-seal each sealed packet after examination. The returning officer shall report to the [*clerk of the crown in chancery*] the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

38. Lastly, the returning officer shall forward to the [*clerk of the crown in chancery*] (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; and the term poll book in any such enactment shall be construed to include any document forwarded in pursuance of this rule.

39. The [*clerk of the crown*] shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a returning officer, and then, unless otherwise directed by an order of the House of Commons, or of one of Her Majesty's superior courts, shall cause them to be destroyed.

In the above Rules 37, 38, and 39, the town clerk is substituted for the clerk of the crown in chancery by Rule 64 (*b*) of this Act.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the [*clerk of the crown in chancery*], except under the order of the House of Commons or under the order of one of Her Majesty's superior courts, to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the house or court making the same may think expedient, and shall be obeyed by the [*clerk of the crown in chancery*]. Any power given to a court by this rule may be exercised by any judge of such court at chambers.

By Rule 64 (*a*) of this Act a county court judge has jurisdiction, with an appeal, as in other cases in the county court.
For "clerk of the crown in chancery" read "town clerk."

41. No person shall, except by order of the House of Commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the [*clerk of the crown in chancery;*] such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the house

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or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

For "clerk of the crown in chancery" read "town clerk."
In a municipal election the county court has jurisdiction to make the order instead of the House of Commons.

42. All documents forwarded by a returning officer in pursuance of this Act to the [*clerk of the crown in chancery,*] other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the [*clerk of the crown in chancery,*] with the consent of the speaker of the House of Commons, and the clerk of the crown shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

For "clerk of the crown in chancery" read "town clerk;" but the regulations for the inspection of documents are to be made by the town council. (Rule 64 of this Act.)

43. Where an order is made for the production by the [*clerk of the crown in chancery*] of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such clerk of the crown or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

General Provisions.

Rule 44 refers only to parliamentary elections.

45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and, in the case of a contested election, of the total number of votes given for each candidate, whether elected or not.

46. Where the returning officer is required or authorized by this Act to give any public notice, he shall carry such requirements into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorized to do by this Act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

Sundays, &c., are not to be counted. (*See* Rule 56, *post.*)

53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

Appendix.

Schedules.

54. Every returning officer, and every officer, clerk, or agent authorized to attend at a polling station, or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this Act any expressions are used requiring or authorizing or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

56. In reckoning time for the purposes of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded; and where anything is required by this Act to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above mentioned.

The computation of time for the purposes of the Municipal Corporations Act, 1882, is regulated by sect. 230 of that Act. (*Ante*, pp. 215 and 216.)

57. In this Act—

* * * * *

The expression "polling place" means, in the case of a borough, such borough or any part thereof in which a separate booth is required or authorized by law to be provided; and

* * * * *

The definitions omitted relate only to parliamentary elections.

PART II.

Rules for Municipal Elections.

64. In the application of the provisions of this schedule to municipal elections the following modifications shall be made :—

(*a.*) The expression "register of voters" means the burgess roll of the burgesses of the borough, or in the case of an election for the ward of a borough, the ward list ; and the mayor shall provide true copies of such register for each polling station :

(*b.*) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the clerk of the crown in chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough ; and the provisions of part one of this schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications ; namely,

(*a.*) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons, or of one of Her Majesty's superior courts ; but an appeal from such county court may be had in like manner as in other cases in such county court ;

(*b.*) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty's principal Secretaries of State ; and subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough :

(*c.*) Nothing in this schedule with respect to the day of the poll shall apply to a municipal election.

An example of the regulations which have been made by a town council under this Rule will be found at the end of this Act.

A county court judge can make the order for inspection for the purposes of a prosecution. (See *Reg.* v. *Beardsall,* L. R. 1 Q. B. D. 452, quoted in notes to sect. 3 of this Act.)

A tribunal in which a municipal election can be questioned is constituted under Part IV. of the Municipal Corporations Act, 1882, ss. 92 and 93.

Rules 65 and 66 relate only to Scotland and Ireland.

Appendix.

Schedules.

SECOND SCHEDULE.

Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

Form of Ballot Paper.

Form of front of Ballot Paper.

Counterfoil No.		
1	BROWN (John Brown, of 52, George St., Bristol, merchant.)	
2	JONES (William David Jones, of High Elms, Wilts, Esq.)	
3	MERTON (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Berks.)	
4	SMITH (Henry Sydney Smith, of 72, High Street, Bath, attorney.)	

Note.—The counterfoil is to have a number to correspond with that on the back of the ballot paper.

Form of back of ballot paper.

No.

Election for county [*or* borough, *or* ward].
18 .

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Note.—This form of ballot paper is not to be used for the election of elective auditors, and revising assessors. (*See* Municipal Corporations Act, 1882, sched. 8, p. 264.)

Directions as to printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses and descriptions, and the number on the back of the paper shall be printed in small characters.

Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous characters, and placarded outside every Polling Station and in every compartment of every Polling Station.

The voter may vote for candidate .

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right hand side, opposite the name of each candidate for whom he votes, thus **X**

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidate , or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

Form of Statutory Declaration of Secrecy.

I solemly promise and declare, that I will not at this election for do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

Form of Declaration of inability to read.

I, *A.B.*, of , being numbered on the register of voters for the county [*or* borough] of , do hereby declare that I am unable to read.

A.B., his mark.

day of .

Appendix. Schedules.

I, the undersigned, being the presiding officer for the polling station for the county [*or* borough] of , do hereby certify, that the above declaration, having been first read to the above-named *A.B.*, was signed by him in my presence with his mark.

Signed, *C.D.*,
Presiding officer for polling station for the county [*or* borough] of .

day of .

REGULATIONS FOR THE INSPECTION OF DOCUMENTS AND FOR THE FEES FOR THE SUPPLY OF COPIES TO BE MADE BY A TOWN COUNCIL.

Borough of N.

THE BALLOT ACT, 1872.

Regulations for the Inspection of Documents.

Regulations for inspection of documents.

We, the mayor, aldermen, and burgesses of the borough of N., acting by the council, do hereby by virtue of "The Ballot Act, 1872," prescribe the following regulations for the inspection of documents in the custody of the town clerk, and for the fees for the supply of copies of documents of which copies are directed to be supplied.

1. The documents in the custody of the town clerk, under the Ballot Act, 1872 (other than ballot papers and counterfoils), shall be open to public inspection in the manner hereinafter mentioned.

2. Any person desiring to inspect such documents shall give notice thereof in writing to the town clerk, and state therein an address in the borough to which a reply may be sent.

3. On the receipt of any such notice the town clerk shall, within one day, give notice in writing making an appointment for the inspection either at the town hall or at his office within two days after the receipt of the notice by him.

4. The town clerk shall also give notice in writing of the appointment to the mayor, or in his illness or absence to the deputy mayor, either of whom if unable to attend may request any member of the town council to do so on his behalf.

5. The inspection shall take place between the hours of 10 a.m. and 4 p.m.

6. The sealed packets of which inspection may be desired shall be opened, and after inspection shall be sealed up again, in the presence of the mayor, the deputy mayor, or the member of the town council attending the inspection.

7. The person making the inspection shall not be entitled to take copies of any documents at the time, but he may before the packets

are resealed demand to be furnished with copies of any of the documents inspected by him, in which case the sealing of the packets in which such documents were contained shall be postponed until the copies have been made, and the packet shall be resealed as soon as practicable by the town clerk.

8. Any person may make a request in writing to the town clerk to be furnished with copies of any such documents, either with or without having made an inspection thereof: and the town clerk on obtaining a written authority from the mayor, or in his illness or absence from the deputy mayor for the time being, shall open the necessary packets, supply such copies with all despatch, and forthwith reseal the packets.

9. No packets opened under these regulations shall be resealed without a memorandum in writing, signed by the town clerk, being inserted therein on which shall be stated :—

a. The date of opening ;

b. The names of the person inspecting (if any) ;

c. The documents (if any) of which copies were taken, and to whom they were supplied ; and

d. The date of the packets being resealed.

10. There shall be paid to the town clerk by the person making any such inspection a sum of one guinea for each day or part of a day during which such inspection shall last, as a remuneration for the duties imposed on him by these regulations.

11. The town council may at any time order any packets to be opened and resealed from time to time for such purposes and in such manner as they shall determine and prescribe in each case.

12. The town clerk is authorized to charge any sum not exceeding twopence per folio of seventy-two words for copies of documents made by him in accordance with these regulations, such charge to cover the cost of all necessary forms and paper used for that purpose.

Given under our corporate seal this day of one thousand eight hundred .

L. S.

I hereby consent to the foregoing regulations prescribed by the town council of the borough of N., for the inspection of documents and fees for the supply of copies of documents, of which copies are directed to be supplied under the provisions of sect. 64 (sub-sect. *b.*) of schedule 1 of the Act 35 & 36 Vict. c. 33.

(Signed)

Home Office,
February, 18 .

Appendix.

CORRUPT PRACTICES.

The Corrupt Practices Prevention Act, 1854.

17 & 18 VICT. Cap. 102.

An Act to consolidate and amend the Laws relating to Bribery, Treating, and undue Influence at Elections of Members of Parliament. [10th August, 1854.]

Whereas the laws now in force for preventing corrupt practices in the election of members to serve in Parliament have been found insufficient: and whereas it is expedient to consolidate and amend such laws, and to make further provision for securing the freedom of such elections:

Sect. 1 is of no practical importance, and is therefore omitted.

The 77th section of the Municipal Corporations Act, 1882, makes bribery, treating, undue influence, and personation include respectively anything done at or with respect to a municipal election, which if done before, at, or after, or with respect to a parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery and treating at a parliamentary election.

Bribery defined.

2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:

1. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election:
2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election:

3. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election:

4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election:

5. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election:

Penalty.

And any person so offending shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of one hundred pounds to any person who shall sue for the same, together with full costs of suit: provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Proviso.

Bribery is an offence at common law.

Lord GLENBERVIE'S definition of bribery at common law is as follows:—"Wherever a person is bound by law to act without any view to his private emolument, and another, by a corrupt contract engages such person, on condition of the payment or promise of money or other lucrative consideration, to act in a manner in which *he* shall prescribe, *both* parties are by such contract guilty of bribery." (2 Doug. 400.) So Lord MANSFIELD, in *Reg.* v. *Vaughan*, 4 Burr. 2501, says: "Wherever it is a crime to take, it is a crime to give; they are reciprocal. And in many cases, especially in bribery at elections to parliament, the attempt is a crime: it is complete on his side who offers it." And it is clear that the offer of a bribe was always a misdemeanor, on the principle that every attempt to commit a misdemeanor is itself a misdemeanor. (See *Reg.* v. *Scofield*, Cald. 397; *Reg.* v. *Johnson*, 2 Show; *Wade* v. *Broughton*, 2 V. & B. 173.) And the asking for a bribe would seem for the same reason to be a misdemeanor also. (Rogers on Elections, 13th Ed., p. 347.)

Where a person has been guilty of several acts of bribery at a municipal election, he is liable to a penalty in respect of each such act of bribery. (*Milnes* v. *Bale*; *Milnes* v. *Lea*, L. R. 10 C. P. 591; 44 L. J. C. P. 336; 33 L. T. (N.S.) 174.)

Appendix.

Note s. 2.

In that case BRETT, J., said: "I think these different acts (of bribery) are so far distinct and separate offences in kind, that to prove a person guilty of any one of them, evidence could not be given of the doing of any other of them. If a person were charged with any one such offence, I am of opinion that evidence of other such acts could not be admitted to show that he was guilty. They are by nature distinct and separate offences. The moment that one of them is committed the offence is complete, and the committal of any other of them would be a complete separate offence.

* * * * * *

"The only sensible construction, in my opinion, is that a person guilty of one of such offences is guilty of one misdemeanor, and a person guilty of several of such offences is guilty of several misdemeanors."

A vacancy having occurred in the representation of a city in Parliament, the respondent and two other candidates in the same political interest came forward as candidates. It was determined by such candidates to hold a test ballot to ascertain which of the three candidates should stand. The respondent was successful; but his agents gave money and drink to voters to induce them to give their votes for the respondent in order to place him at the head of the test ballot, without, however, making any stipulation as to their votes at the election. It was *held* that the case was directly and distinctly within the third clause of this section. (Bristol Election Petition, *Brett* v. *Robinson*, L. R. 5 C. P. 503; 39 L. J. C. P. 265; 23 L. T. 188; 18 W. R. 866.)

As to when a distribution of coals by a candidate by means of tickets signed for him by his political agent is bribery within the meaning of the above section, *see* Boston Election Petition, *In re Malcolm* v. *Ingram*, L. R. 9 C. P. 610; 43 L. J. C. P. 331; 31 L. T. 331.

In the case of *Simpson* v. *Yeend*, L. R. 4 Q. B. 626; 38 L. J. Q. B. 313; 21 L. T. (N.S.) 56; 10 B. & S. 752, the defendant whilst soliciting a vote at an election of councillors, told the voter that he would be remunerated for what loss of time might occur by his going to vote. It was *held* that the transaction was bribery within the meaning of sub-section 1 of the above section, inasmuch as it amounted to an offer or a promise to procure or endeavour to procure money or valuable consideration for a vote in order to induce the voter to vote at an election.

In order to disqualify a candidate from being registered as a voter by reason of personal bribery or bribery by an agent with his knowledge and consent, he must be found by the report of the election judge to have been so guilty. It is not enough that the judge states facts from which personal bribery or other corrupt practice might be inferred. (*Grant* v. *Pagham* (*Overseers*) 3 C. P. D. 80; 47 L. J. C. P. 59; 37 L. T. (N.S.) 404; 2 Hopw. & C. 384.)

Bribery further defined.

3. The following persons shall also be deemed guilty of bribery and shall be punishable accordingly:

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election:
2. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf,

receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election:

And any person so offending shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of ten pounds to any person who shall sue for the same, together with full costs of suit. Penalty.

Treating defined.

4. Every candidate at an election, who shall corruptly by himself or by or with any person, or by any other ways or means on his behalf, at any time, either before, during or after any election, directly or indirectly, give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting, at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of fifty pounds to any person who shall sue for the same, with full costs of suit; and every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision, shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of none effect.

Penalty.

Voters accepting treating to be incapable of voting.

In the *Bewdley Case*, 1 O'M. & H. 16, BLACKBURN, J., said: "Looking at those words, it is plain that those who prepared the Act have endeavoured to take in almost everything that possibly could be taken in, but they have very properly and wisely governed it all by the word 'corruptly.' As to this word 'corruptly,' the true construction of the Act is that which was stated by Mr. Justice WILLES, in giving his opinion in the House of Lords in the case *Cooper* v. *Slade* (6 H. L. Cas. 746; 27 L. J. Q. B. 453; 6 E. & B. 447), namely, that 'corruptly' there does not mean wickedly, or immorally, or dishonestly, or anything of that sort, but with the object and intention of doing that which the Legislature plainly means to forbid. In fact, giving meat or drink is treating when the person who gives it has an intention of treating—not otherwise, and in all cases where there is any evidence to show that meat or drink has been given, it is a question of fact for the judge whether the intention is made out by the evidence, which in every individual case must stand on its own grounds, although each individual case may be a mere feather's weight by itself, and so small that one could not act upon it, yet if there is a large number of cases, a large number of slight cases will together make a strong one; and consequently, it must always be a very important inquiry what was the scale, the amount

Appendix. Note s. 4.

and extent to which it was done. In considering what is corrupt treating and what is not, we must look broadly to the common sense of the thing. There is an old legal maxim, '*Inter apices juris summa injuria.*' To go by the strict letter of the law often would produce a very grave wrong. If we were to say an election was void upon a single case of that sort, we should be going to the '*apices juris*,' and the result would be '*summa injuria.*' Therefore the inquiry must be as to the extent and amount of such cases."

In the *Wallingford Case*, 1 O'M. & H. 59, BLACKBURN, J., said: "The statute does not say that it shall depend upon the amount of drink. The smallest quantity given *with the intention* will avoid the election. But when we are considering as a matter of fact the evidence, we must, as a matter of common sense, see on what scale and to what extent it was done.

* * * * * *

"Whenever also the intention is by such means to gain popularity, and thereby to affect the election, or if it be that persons are afraid that if they do not provide entertainment and drink to secure the strong interest of the publicans, and of the persons who like drink, whenever they can get it for nothing, they will become unpopular, and they therefore provide it in order to affect the election,—then I think that it is corrupt treating."

Where, on the other hand, the refreshment was strictly confined to those who were actually engaged in the work of the election, and were known supporters of the sitting member, his committee-men in fact, the election was upheld. (*Bradford*, 1 O'M. & H. 33.)

As to treating after an election, *see* the *Brecon Case*, 2 O'M. & H. 43, in which Mr. Justice LUSH said: "I do not agree that treating with a view to attach the voters to the candidate and secure their *future* support is within this branch of the section. Treating for such a purpose may peril the *future* election, which it is designed to influence, but we are now dealing with a past election. Nor can it be the merely giving an entertainment as an expression of gratitude, or by way of rewarding the voters.

"The treating which the Act calls corrupt as regards a bygone election, must be connected with something which *preceded* the election, must be the complement of something done or existing *before*, and calculated to influence the voter, *while the vote was in his power*. An invitation given *before* to an entertainment to take place afterwards, or a practice of giving entertainments after an election, which it may be supposed the voters would calculate on, would, if followed up by the treat afterwards, give to it the character of corrupt treating. But when the entertainment was, as in this case, not only not mentioned, but not even thought of till after the election was over, no such entertainment ever having been given before, it cannot in my judgment be deemed corrupt treating within the meaning of the Act."

It would be otherwise where a large amount of beer had been drunk and paid for by the sitting member, although subsequently to the election, where the broad and obvious state of the whole matter was, that it was expected and understood, although not expressed in absolute words, that a large sum of money would be paid for beer. (The *Poole Case*, 2 O'M. & H. 124.)

In the *Kidderminster Case*, 2 O'M. & H. 170, the sitting member before the polling promised an entertainment after the election. In pursuance of his promise he prepared to give the entertainment; subsequently, under advice, he countermanded the entertainment, but he had paid a large sum for expenses incurred in the preparation. The election judge avoided the election.

The corrupt payment of rates is punishable as bribery by sect. 49 of the 30 & 31 Vict. c. 102, which enacts that—

Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candi-

date or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made shall also be guilty of bribery, and punishable accordingly.

Undue influence defined.

5. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon any voter, either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of fifty pounds to any person who shall sue for the same, together with full costs of suit.

Penalty.

In the *Lichfield Case*, 1 O'M. & H. 25, Mr. Justice WILLES, in delivering judgment, said: "The proper definition of that undue influence which is dealt with [by this section] is using any violence or threatening any damage, or resorting to any fraudulent contrivance to restrain the liberty of a voter, so as either to compel or frighten him into voting, or abstaining from voting, otherwise than he freely wills."

As to what amount of violence will avoid an election, see *Salford*, 1 O'M. & H. 141; *Nottingham*, *ibid*, 245; *Stafford*, *ibid*, 229; *Drogheda*, *ibid*, 255; *North Durham*, 2 O'M. & H. 156; *Sligo*, 1 O'M. & H. 300.

As to what will amount to injury or the threat thereof—by landlords, see *Windsor*, 1 O'M. & H. 6; *Galway*, 2 O'M. & H. 54; *North Norfolk*, 1 O'M. & H. 237;—by employers, *see* the *Lichfield Case*, 1 O'M. & H. 28; *Westbury*, *ibid*, 50; *Blackburn*, *ibid*, 203;—by withdrawal of custom, see *North Durham*, 2 O'M. & H. 159; *North Norfolk*, *supra*;—by giving up sitting in chapel, see *Northallerton*, 1 O'M. & H. 168;—by Roman Catholic priest, see *Sligo*, 2 P. R. & D. 258; *Mayo*, *ibid*, 201; *Tipperary*, 2 O'M. & H. 31; *Longford*, *ibid*, 16; *Galway*, 1 O'M & H. 305; *Galway*, 2 O'M. & H. 57; *Longford*, *ibid*, 14.

As to what is abduction, &c., see *Cockermouth*, 2 P. R. & D. 166; *Gloucester*, 2 O'M. & H. 60.

Forcible abduction or duress would come under this section. Other methods, however, equally *undue*, though without force, as by making a voter drunk, or by getting him away from the election on some pretence, may easily be conceived. (Rogers on Election, 13th Edition, p. 405.)

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Sect. 6.

Names of offenders to be struck out of register, and inserted in separate list.

6. Whenever it shall be proved before the revising barrister that any person who is or claims to be placed on the list or register of voters for any county, city, or borough has been convicted of bribery or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating, or undue influence, or either of them, then and in that case such revising barrister shall, in case the name of such person is in the list of voters, expunge the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list, to be entitled "The List of Persons disqualified for Bribery, Treating, or undue Influence," which last-mentioned list shall be appended to the list or register of voters, and shall be printed and published therewith, wherever the same shall be or is required to be printed or published.

No cockades, &c., to be given at elections.

7. No candidate before, during, or after any election shall in regard to such election, by himself or agent, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the county, city, borough, or place for which such election is had, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall for every such offence forfeit the sum of two pounds to such person as shall sue for the same, together with full costs of suit; and all payments made for or on account of any chairing, or any such cockade, ribbon, or mark of distinction as aforesaid, or of any bands of music or flags or banners, shall be deemed illegal payments within this Act.

Penalty.

Sect. 8 refers to voters not serving as special constables during a parliamentary election.

Penalties how to be recovered.

9. The pecuniary penalties hereby imposed for the offences of bribery, treating, or undue influence respectively shall be recoverable by action or suit by any person who shall sue for the same in any of Her Majesty's superior courts at Westminster, if the offence be committed in England or Wales, and in any of Her Majesty's superior courts in Dublin if the offence be com-

mitted in Ireland, and in or before the Court of Sessions if the offence be committed in Scotland, and not otherwise.

Costs and expenses of prosecutions.

10. It shall be lawful for any criminal court, before which any prosecution shall be instituted for any offence against the provisions of this Act, to order payment to the prosecutor of such costs and expenses as to the said court shall appear to have been reasonably incurred in and about the conduct of such prosecution: provided always, that no indictment for bribery or undue influence shall be triable before any court of quarter sessions.

The 11th section was repealed by the Ballot Act, 1872.

In cases of private prosecutions, if judgment be given for the defendant, he shall recover costs from the prosecutor.

12. In case of any indictment or information by a private prosecutor for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which such judgment shall be given.

Prosecutor not to be entitled to costs unless he shall have entered into a recognizance to conduct prosecution and pay costs.

13. It shall not be lawful for any court to order payment of the costs of a prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance, with two sufficient sureties, in the sum of two hundred pounds (to be acknowledged in like manner as is now required in cases of writs of *certiorari* awarded at the instance of a defendant in an indictment), with the conditions following; that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

Limitation of actions.

14. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of one year next after such offence against this Act shall be committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the court

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out of which such writ or other process shall have issued; and in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay.

This section is extended to misdemeanors by 26 & 27 Vict. c. 29, s. 5. Sects. 15 to 22 were repealed by 26 & 27 Vict. c. 29.

Refreshments to voters on the days of nomination or polling declared illegal.

23. And whereas doubts also have arisen as to whether the giving of refreshment to voters on the day of nomination or day of polling be or be not according to law, and it is expedient that such doubts should be removed: be it declared and enacted, that the giving or causing to be given to any voter on the day of nomination or day of polling, on account of such voter having polled or being about to poll, any meat, drink, or entertainment, by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of forty shillings for each offence to any person who shall sue for the same, together with full costs of suit.

This section applies to municipal elections, (*Hargreaves* v *Simpson*, L. R. 4 Q. B. D. 403; 48 L. J. Q. B. 607; 41 L. T. (N.S.) 216.) This case arose under the repealed provisions of the Corrupt Practices (Municipal Elections) Act, 1872; but similar provisions are contained in the Municipal Corporations Act, 1882, sect. 78.

The penalties imposed by this section are cumulative.

In the case of *Cooper* v. *Slade*, 6 E. & B. 447, Mr. Baron ALDERSON said:—

"The fourth section only prohibits the corruptly giving of meat, &c., for the purpose of corruptly influencing a voter to give a vote; it does not prohibit the *bonâ fide* giving of such meat unconditionally; whilst this section absolutely prohibits any giving of any refreshment to any voter on the day of nomination or day of polling on account of his having polled or being about to poll, without using any such words as 'in order to induce.' Now, a giving of refreshment might clearly be within this section, and not within sect. 4, because not given in order to induce the voter to vote." (*See* also *Carrickfergus*, 1 O'M. & H. 264.)

Sect. 24 to 34, except 33, are repealed by the 26 & 27 Vict. c. 29. Sect. 33 is repealed by the Stat. Law Rev. Act, 1878.

In actions for penalties, parties, &c., to be competent witnesses.

35. On the trial of any action for recovery of any pecuniary penalty under this Act, the parties to such action, and the husbands and wives of such parties respectively, shall be competent and compellable to give evidence in the same manner as parties, and their husbands and wives, are competent and compellable to give evidence in actions and suits under the Act of the fourteenth and fifteenth Victoria, chapter ninety-nine, and "The Evidence Amendment Act, 1853," but subject to and

with the exceptions contained in such several Acts: provided always, that any such evidence shall not thereafter be used in any indictment or criminal proceeding under this Act against the party giving it.

Candidate declared guilty of bribery incapable of being elected during parliament then in existence.

36. If any candidate at an election for any county, city, or borough shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in parliament for such county, city, or borough during the parliament then in existence.

The report of a judge is now substituted for the declaration of an election committee. (31 & 32 Vict. c. 125, sect. 46.)

Short title.

37. In citing this Act in any instrument, document, or proceeding, or for any purpose whatsoever, it shall be sufficient to use the expression "The Corrupt Practices Prevention Act, 1854."

Interpretation of terms.

38. Throughout this Act, in the construction thereof except there be something in the subject or context repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts, or division of a county, stewartry, or combined counties respectively returning a member or members to serve in parliament; and the words "city or borough" shall mean any university, city, borough, town corporate, county of a city, county of a town, cinque port, district of burghs, or other place or combination of places (not being a county as hereinbefore defined) returning a member or members to serve in parliament; and the word "election" shall mean the election of any member or members to serve in parliament; and the words "returning officer" shall apply to any person or persons to whom, by virtue of his or their office under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in parliament, by whatever name or title such person or persons may be called; and the words "revising barrister" shall extend to and include an assistant barrister and chairman, presiding in any court held for the revision of the lists of voters or his deputy in Ireland, and a sheriff or sheriff's court of appeal in Scotland and every other person whose duty it may be to hold a court for the revision and correction of the lists or registers of voters

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in any part of the United Kingdom; and the word "voter" shall mean any person who has or claims to have a right to vote in the election of a member or members to serve in parliament; and the words "candidate at an election" shall include all persons elected as members to serve in parliament at such election, and all persons nominated as candidates, or who shall have declared themselves candidates at or before such election; and the words "personal expenses," as used herein with respect to the expenditure of any candidate in relation to any election, shall include the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election.

The definition in this section of "candidates at an election" is repealed, and a new definition given by sect. 3 of 21 & 22 Vict. c. 87, *post.*

Duration of Act.

39. This Act shall continue in force for one year next after the passing thereof, and thenceforth to the end of the then next session of parliament.

This Act is now in force until the end of the year 1883 (45 & 46 Vict. c. 64).

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21 & 22 VICT. CAP. 87.

An Act to continue and amend the Corrupt Practices Prevention Act, 1854. [2nd August, 1858.]

Sect. 1 relates to the travelling expenses of voters, but by the Municipal Corporations Act, 1882, sect. 83, the payment for conveyance of voters is prohibited at a municipal election.

Sect. 2 is repealed by 26 & 27 Vict. c. 29.

Definition of candidates.

3. So much of section thirty-eight of the said first-mentioned Act as defines the words "candidate at an election" shall be repealed; and in the construction of the said Act as amended by this Act the words "candidate at an election," and the words "candidate at any election," shall include all persons elected to serve in Parliament at such election, and all persons nominated as candidates at such election, or who shall have declared themselves candidates on or after the day of the issuing of the writ for such election, or after the dissolution or vacancy in consequence of which such writ shall have been issued: provided that nothing herein contained shall be construed to impose any liability on any person nominated without his consent.

Sect. 4 is repealed by the 26 & 27 Vict. c. 29, and sect. 5 relates only to the duration of the Act, which is continued until the end of the year 1883 by 45 & 46 Vict, c. 64.

26 VICT. CAP. 29. Appendix.

An Act to amend and continue the Law relating to Corrupt Practices at Elections of Members of Parliament.

[8th June, 1863.]

1. The expression "the Corrupt Practices Prevention Acts" shall include this Act and the said Act of the twenty-first and twenty-second years of the reign of Her present Majesty, and the Corrupt Practices Prevention Act, 1854, as amended by the said other Acts. Short title.

Sects. 2 to 4 do not relate to municipal elections.

Legal Proceedings.

5. The provisions of the fourteenth section of the Corrupt Practices Prevention Act, 1854, shall extend to a misdemeanor or to any other offence under the Corrupt Practices Prevention Acts not punishable by a penalty or forfeiture, as well as to proceedings for any offence punishable by a penalty or forfeiture. Sect. 14 of 17 & 18 Vict. c. 102, extended to misdemeanors, &c.

6. In any indictment or information for bribery or undue influence, and in any action or proceeding for any penalty for bribery, treating, or undue influence, it shall be sufficient to allege that the defendant was at the election at or in connection with which the offence is intended to be alleged to have been committed guilty of bribery, treating, or undue influence (as the case may require) and in any criminal or civil proceedings in relation to any such offence the certificate of the returning officer in this behalf shall be sufficient evidence of the due holding of the election, and of any person therein named having been a candidate thereat. General allegations sufficient in indictments.

Sect. 7 relates to the evidence of witnesses on an election committee, now an election petition, and is omitted. The Municipal Corporations Act, 1882, sect. 94, contains provisions which supersede those in this section. (See *ante*, p. 117.)

The remaining sections are repealed, or are not of practical importance.

Appendix.

31 & 32 VICT. CAP. 125.

An Act for amending the Laws relating to Election Petitions, and providing more effectually for the Prevention of Corrupt Practices at Parliamentary Elections.

[31st July, 1868.]

* * * * *

It is provided by the Municipal Corporations Act, 1882, sect. 78, that a person guilty of a corrupt practice at a municipal election shall be liable to the like actions, prosecutions, penalties, forfeitures, and punishments, as if the corrupt practice had been committed at a parliamentary election.

The following sections of the above statute, which provide for punishment of corrupt practices at parliamentary elections are, therefore, set forth, although sect. 79 of the Municipal Corporations Act, 1882, contains similar provisions.

Punishment of Corrupt Practices.

Punishment of candidate guilty of bribery.

43. Where it is found, by the report of the judge upon an election petition under this Act, that bribery has been committed by or with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his being found guilty; and he shall further be incapable during the said period of seven years—

(1.) Of being registered as a voter and voting at any election in the United Kingdom; and

(2.) Of holding any office under the Act of the session of the fifth and sixth years of the reign of His Majesty King William the Fourth, chapter seventy-six, or of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, or any municipal office; and

(3.) Of holding any judicial office, and of being appointed and of acting as a justice of the peace.

Penalty for employing corrupt agent.

44. If on the trial of any election petition under this Act any candidate is proved to have personally engaged at the election to which such petition relates as a canvasser or agent for the manage-

ment of the election, any person knowing that such person has within seven years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal, or been reported guilty of any corrupt practice by a committee of the House of Commons, or by the report of the judge upon an election petition under this Act, or by the report of commissioners appointed in pursuance of the Act of the session of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter fifty-seven, the election of such candidate shall be void.

Disqualification of persons found guilty of bribery.

45. Any person, other than a candidate, found guilty of bribery in any proceeding in which after notice of the charge he has had an opportunity of being heard, shall, during the seven years next after the time at which he is so found guilty, be incapable of being elected to and sitting in parliament; and also be incapable—

(1.) Of being registered as a voter and voting at any election in the United Kingdom; and

(2.) Of holding any office under the Act of the session of the fifth and sixth years of the reign of His Majesty King William the Fourth, chapter seventy-six, or of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, or any municipal office; and

(3.) Of holding any judicial office and of being appointed and of acting as a justice of the peace.

Amendment of the law relating to the disqualification of candidates for corrupt practices.

46. For the purpose of disqualifying, in pursuance of the thirty-sixth section of "The Corrupt Practices Prevention Act, 1854," a member guilty of corrupt practices, other than personal bribery within the forty-third section of this Act, the report of the judge on the trial of an election petition shall be deemed to be substituted for the declaration of an election committee, and the said section shall be construed as if the words "reported by a judge on the trial of an election petition" were inserted therein in the place of the words "declared by an election committee."

Removal of disqualification on proof that

47. If at any time after any person has become disqualified by virtue of this Act, the witnesses, or any of them, on whose testimony such person shall have so become disqualified, shall,

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Sect. 47. disqualification was procured by perjury.

upon the prosecution of such person, be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the court to order, and the court shall, upon being satisfied that such disqualification was procured by reason of perjury, order, that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

General Rules regulating the procedure in Municipal Election Petitions, made pursuant to the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), and in force until superseded by Rules to be made under the Municipal Corporations Act, 1882, sect. 100.

GENERAL RULES, 1872.

1. The presentation of a municipal election petition shall be made by leaving it at the office of the master for the time being nominated by the Chief Justice of the Common Pleas, under the Parliamentary Elections Act, 1868, and such master or his clerk shall (if required) give a receipt which may be in the following form :—

Received on the day of at the master's office a petition touching the election of *A.B.*, alderman, councillor, [&c., *as the case may be*] for the borough of purported to be signed by [*insert the names of petitioners*].

C.D., Master's Clerk.

With the petition shall also be left a copy thereof for the master to send to the town clerk, pursuant to sect. 13, sub-sect. (1), of the Municipal Elections Act.

2. A municipal election petition shall contain the following statements :—

(1.) It shall state the right of the petitioner or petitioners to petition within sect. 13, sub-sect. (1), of the Act :

(2.) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

3. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the Court of Common Pleas or a judge at chambers.

4. The petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced (as the case may be), and shall be signed by all the petitioners.

5. The following form, or one to the like effect, shall be sufficient:—

In the Common Pleas.

The Municipal Elections Act, 1872.

Election for [*state the place and office for which election held*] holden on the day of A.D.

The petition of *A.* of [*or* of *A.* of , and *B.* of *as the case may be*] whose names are subscribed.

1. Your petitioner *A.* is a person who voted [*or* had a right to vote *as the case may be*], at the above election, [*or* was a candidate at the above election]; and your petitioner *B.* [*here state in like manner the right of each petitioner.*]

2. And your petitioners state that the election was holden on the day of A.D. , when *A.B.*, *C.D.*, and *E.F.*, were candidates, and that *A.B.* and *C.D.* have been in the usual manner declared to be duly elected.

3. And your petitioners say that [*here state the facts and grounds on which the petitioners rely.*]

Wherefore your petitioners pray that it may be determined that the said *A.B.* was not duly elected, and that the election was void [*or* that the said *E.F.* was duly elected and ought to have been returned, *or as the case may be*].

(Signed) *A.*
B.

6. Evidence need not be stated in the petition, but the Court of Common Pleas or a judge at chambers may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the Court of Common Pleas, and upon such terms as to costs and otherwise as may be ordered.

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7. When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial, deliver to the master and also at the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the Court of Common Pleas or a judge at chambers, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

8. When the respondent in a petition under the Act complaining of an undue election, and claiming the office for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the 15th section of the Act, subsect. (9), such respondent shall, six days before the day appointed for trial, deliver to the master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the Court of Common Pleas or a judge at chambers, upon such terms as to amendments of the list, postponement of the inquiry, and payment of costs, as may be ordered.

9. With the petition petitioners shall leave at the office of the master a writing, signed by them or on their behalf, giving the name of some person entitled to practise as an attorney in the Court of Common Pleas, whom they authorize to act as their agent, or stating that they act for themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to them may be left: and if no such writing be left or address given, then notice of objection to the recognizances, and all other notices and proceedings may be given by sticking up the same at the master's office.

10. Any person elected to any municipal office may at any time after he is elected send or leave at the office of the master a writing, signed by him or on his behalf, appointing a person entitled to practise as an attorney in the Court of Common Pleas, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address, within three miles from the General Post Office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the master's office.

11. The master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

12. The master shall, upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to sect. 13 of the Act, sub-sect. (1), and shall therewith send the name of the petitioner's agent, if any, and of the address, if any, given as prescribed, and also of the name of the respondent's agent, and the address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

13. The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

14. Where the respondent has named an agent or given an address, the service of a municipal election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service may be personal on the respondent, unless a judge at chambers on an application made to him not later than five days after the petition is presented on affidavit,

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showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

15. In case of evasion of service the sticking up a notice in the office of the master of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

16. The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of "The Corrupt Practices Municipal Elections Act, 1872, Security Fund," which shall be vested in and drawn upon from time to time by the chief justice of the Common Pleas for the time being, for the purposes for which security is required by the said Act, and a bank receipt or certificate for the same shall be forthwith left at the master's office. (*See* Additional General Rules, *post.*)

17. The master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

18. The recognizance as security for costs may be acknowledged before a judge at chambers or the master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

19. The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows :—

Be it remembered that on the day of , in the year of our Lord 18 , before me [*name and description*] came *A. B.* of [*name and description as above prescribed*] and acknowledged himself [*or* severally acknowledged themselves] to owe to our Sovereign Lady the Queen the sum of five hundred pounds [*or* the following sums], (that is to say), the said *C. D.* the sum of £ , the said *E. F.* the sum of £ , the said *G. H.* the sum of £ , and the said *J. K.* the sum of £ , to be levied on his [*or* their respective] goods and chattels, land and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is, that if [*here insert the names of all the petitioners, and if more than one add*, or any of them] shall well and truly pay all costs, charges and expenses in respect of the election petition signed by him [*or* them] relating to the [*here insert the name of the borough*] which shall become payable by the petitioner [*or* petitioners, or any of them], under the Corrupt Practices Municipal Elections Act, 1872, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

Signed, [*Signature of sureties.*]

Taken and acknowledged by the above-named [*name of sureties*] on the day of at

Before me, *C. D.*,
A justice of the peace [*or as the case may be.*]

20. The recognizance or recognizances shall be left at the master's office, by or on behalf of the petitioner in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

21. The time for giving notice of any objection to a recognizance under the 13th section of this Act, sub-section (4), shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service.

22. An objection to the recognizance must state the ground or grounds thereof, as that the sureties, or any and which of them are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

23. Any objection made to the security shall be heard and decided by the master, subject to appeal within five days, to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

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24. Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the master or judge may think fit.

25. If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the 13th section of the said Act, and the petition shall be at issue.

26. If by order made upon such summons an objection be allowed and the security be declared insufficient, the master or judge shall in such order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

27. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the master or judge, and in default of such order shall form part of the general costs of the petition.

28. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the master there be also left with the master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorized to take, or before some person authorized to take affidavits in the Court of Common Pleas, that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows :—

In the Common Pleas.

Corrupt Practices (Municipal Elections) Act, 1872.

I, *A. B.*, of [*as in recognizance*] make oath and say that I am seised or possessed of real [*or* personal] estate above what will satisfy my debts, of the clear value of .

Sworn, &c.

29. The order of the master for payment of costs shall have the same force as an order made by a judge, and may be made a rule of the Court of Common Pleas, and enforced in like manner as a judge's order.

30. The master shall make out the municipal election list. In it he shall insert the names of the agents of the petitioners and respondents, and the addresses to which notices may be sent, if any. The list may be inspected at the master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "Municipal Election List."

31. The time of the trial of each municipal election petition shall be fixed by the election judges on the rota, or any one of them, who shall signify the same to the master, and notice thereof shall be given in writing by the master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

The town clerk shall forthwith publish the same in the borough.

32. The sticking up of the notice of trial at the office of the master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

33. The notice of trial may be in the following form:—

Corrupt Practices (Municipal Election) Act, 1872.

Election petition of borough of .

Take notice that the above petition [*or* petitions] will be tried at on the day of and on such other subsequent days as may be needful.

Dated the day of .

Signed by order, *A. B.*,

The master appointed under the above Act.

34. A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form

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as the judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

35. In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

36. No formal adjournment of the court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

37. The application to state a special case may be made by rule in the Court of Common Pleas when sitting, or by a summons before a judge at chambers, upon hearing the parties.

38. The title of the court held for the trial of a municipal election petition may be as follows:—

"Court for the trial of a municipal election petition for the borough of [*or as may be*] between petitioner and respondent," and it shall be sufficient so to entitle all proceedings in that court.

39. An officer shall be appointed for each court for the trial of a municipal election petition by the election judges at the time that they assign the petition to the barrister; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

Rule 40 is repealed by Additional General Rules of 27th January, 1875, No. 5, p. 467.

41. The order of the court to compel the attendance of a person as a witness may be in the following form:—

Court for the trial of a municipal election petition for [*complete the title of the court*] the day of .

To *A. B.* [*describe the person*]. You are hereby required to attend before the above court at [*place*] on the day of at the hour of [*or* forthwith, *as the case may be*], to be examined as a witness in the matter of the said petition, and to attend the said court until your examination shall have been completed.

As witness my hand,

A. B.,
The barrister to whom the trial of the said petition is assigned.

42. In the event of its being necessary to commit any person for contempt the warrant may be as follows:—

At a court holden on at for the trial of a municipal election petition for the borough of , before *A. B.*, one of the barristers appointed for the trial of municipal election petitions, pursuant to "The Corrupt Practices (Municipal Elections) Act, 1872."

Whereas *C. D.* has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said *C. D.* for his said contempt to be imprisoned in the gaol for calendar months [*or as may be*], and to pay to our Lady the Queen a fine of £ , and to be further imprisoned in the said gaol until the said fine be paid. And the court further orders that the sheriff of the borough [*if any, or as the case may be*], and all constables and officers of the peace of any county, borough, or place where the said *C. D.* may be found, shall take the said *C. D.* into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence. And the court further orders the said gaoler to receive the said *C. D.* into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

A. B.

Signed the day of . *A. B.*

43. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the superior courts, as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed or any or either of them.

44. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before

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a judge, who shall have the same control over the proceedings under the Corrupt Practices (Municipal Elections) Act, 1872, as a judge at chambers in the ordinary proceedings of the superior courts, and such questions and matters shall be heard and disposed of then by any judge at chambers.

45. Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient:—

Corrupt Practices (Municipal Elections) Act, 1872.

Borough of petition of [*state petitioners*] presented day of .

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this day of .

(Signed)

46. The notice of application for leave to withdraw shall be left at the master's office.

47. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the town clerk, who shall make it public in the borough to which it relates, and shall be forthwith published by the petitioner in at least one newspaper circulating in the place.

The following may be the form of such notice:—

Corrupt Practices (Municipal Elections) Act, 1872.

In the election petition for in which is petitioner and respondent.

Notice is hereby given, that the above petitioner has on the day of lodged at the master's office notice of an application to withdraw the petition, of which notice the following is a copy [*set it out.*]

And take notice that by the rule made by the judges, any person who might have been a petitioner in respect of the said election, may, within five days after publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

48. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice, in writing, signed by him or on his behalf, to the master of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

49. The time and place for hearing the application shall be fixed by a judge, and whether before the Court of Common Pleas or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the judge directs.

50. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under sect. 17, sub-sect. (5), of the said Act, shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition; and the time within which application may be made to the Court of Common Pleas or a judge at chambers, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the Court of Common Pleas or a judge at chambers may allow.

51. If the respondent dies, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the master.

52. The manner and time of the respondent's giving notice that he does not intend to oppose the petition, shall be by leaving notice thereof in writing at the office of the master

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signed by the respondents six days before the day appointed for trial exclusive of the day of leaving such notice.

53. Upon such notice being left at the master's office, the master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

54. The time for applying to be admitted as a respondent in either of the events mentioned in the 18th section of the Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the Court of Common Pleas or a judge at chambers may allow.

55. Costs shall be taxed by the master, or at his request by any master of a superior court, upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered by execution issued upon the rule of court ordering them to be paid, or if payable by the order of a judge, then by making such order a rule of court in the ordinary way and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the chief justice of the Common Pleas for the time being, upon a duplicate of the rule of court.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the Court of Common Pleas.

56. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the master, of his appointment to act as such agent, and service of notices and proceedings upon such agent, shall be sufficient for all purposes.

57. No proceeding under the Corrupt Practices (Municipal Elections) Act, 1872, shall be defeated by any formal objection.

58. Any rule made or to be made in pursuance of the Act, if made in term time, shall be published by being read by the

master in the Court of Common Pleas, and if made out of term, by a copy thereof being put up at the master's office.

Dated the 20th day of November, 1872.

COLIN BLACKBURN,
H. S. KEATING,
A. CLEASBY,

The judges for the time being on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868.

ADDITIONAL GENERAL RULES.

1. All claims at law or in equity to money deposited or to be deposited in the Bank of England for payment of costs, charges, and expenses payable by the petitioners pursuant to the 16th general rule, made the 20th day of November, 1872, by the judges for the trial of election petitions in England, shall be disposed of by the Court of Common Pleas or a judge at chambers.

2. Money so deposited shall, if, and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned, or otherwise disposed of as justices may require, by rule of the Court of Common Pleas, or order of a judge at chambers.

3. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the Court of Common Pleas or judge at chambers may require.

4. The rule or order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

5. Upon such a rule or order being made, the amount may be drawn for by the chief justice of the Common Pleas for the time being.

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6. The draft of the chief justice of the Common Pleas for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder.

7. The barrister engaged may appoint a proper person to act as crier and officer of the court.

8. The shorthand writer to attend at the trial of a petition shall be the shorthand writer to the House of Commons for the time being, or his deputy, and the master shall send a copy of the notice of trial to the said shorthand writer to the House of Commons.

COLIN BLACKBURN,
H. S. KEATING,
A. CLEASBY,

Judges for the time being on the rota for the trial of election petitions in England, pursuant to the Parliamentary Elections Act, 1868.

Dated the 10th day of December, 1872.

ADDITIONAL GENERAL RULES made by the Judges for the time being for the trial of ELECTION PETITIONS in ENGLAND, for the more effectual execution of "The Corrupt Practices (Municipal Elections) Act, 1872."

1. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the master shall so direct, the order itself, or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the master, and the same shall be produced at the trial by the registrar, stamped with the official seal. Such order and particular respectively shall be filed by the party obtaining the same.

2. The petitioner, or his agent shall, immediately after notice of the presentation of a petition, and of the nature of the proposed security shall have been served, file with the master an affidavit of the time and manner of service thereof.

3. The days mentioned in Rules 7 and 8, and in any rule of court or judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial shall be reckoned exclusively of the day of delivery, or of doing the act ordered and the day appointed for trial, and exclusively also of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving.

4. When the last day for presenting petitions, or filing lists of votes or objections, under Rules 7 and 8, or recognizances, or any other matter requiring to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the master's office at any time during such day; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

5. Rule 40 is hereby revoked, and in lieu thereof it is ordered that the amount to be paid to any witness whose expenses shall be allowed by the barrister trying the petition shall be ascertained and certified by the registrar; or in the event of his becoming incapacitated from giving such certificate, by the barrister.

6. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in the 18th section of the Act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

7. If all the respondents shall give notice of their intention not to oppose the petition, and no other person shall be admitted as a respondent, the Court of Common Pleas, or a judge may either declare the election void, or direct the trial to proceed. Notice of such order shall be forthwith given by the master to the town clerk, and if the election be declared void, the office

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shall be deemed to be vacant from the first day (not being a *dies-non*) after the date of such order.

The court or judge may also make such order as to costs as may be just.

Dated the 27th day of January, 1875.

G. Pigott,
Robert Lush,
George E. Honyman,

Judges for the time being on the rota for the trial of election petitions in England.

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38 & 39 VICT. Cap. 83.

An Act to amend the Law relating to Securities for Loans contracted by Local Authorities. [13th August, 1875.]

Whereas it is expedient to amend the law relating to securities for loans contracted by local authorities:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

(1.) *Preliminary.*

Short title.

1. This Act may be cited for all purposes as "The Local Loans Act, 1875."

Limits of Act.

2. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

3. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-six, which day is hereinafter referred to as the commencement of this Act.

Definition of borrowing under Act.

4. A local authority shall be deemed to borrow, subject to the provisions of this Act, whenever it raises a loan by the issue of debentures or debenture stock or annuity certificates, purporting to be created under its powers, or partly in one way

and partly in another; subject to this proviso, that where a loan is directed to be raised by debentures or debenture stock or annuity certificates under this Act, the prescribed mode only shall be adopted.

(2.) *Debentures.*

Regulations as to debentures.

5. A debenture under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such debenture specified with payment, as in the debenture mentioned, of the principal sum and interest therein specified.

Where a debenture under this Act charges property other than the local rate, and it is intended that in default of payment of the principal sum due on such debenture, or of the interest thereon, the property is to be sold, a statement to that effect shall be inserted in the debenture.

The principal sum may be made payable to the bearer of the debenture, or to a person to be named therein, his executors, administrators, or assigns.

A debenture in which the principal sum is made payable to the bearer shall be transferable by delivery.

A debenture in which the principal sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal debenture, and shall be transferable by writing in manner directed by the local authority.

There may be attached to a debenture under this Act, or be thereafter issued in respect thereof, or partly in one way and partly in the other, coupons making the interest as therein mentioned payable to the bearer of each coupon, or to the person named in each coupon or his order, or the interest on a debenture may be made payable to the owner for the time being of such debenture, or may be otherwise made payable in such manner as in the said debenture mentioned.

A coupon making the interest therein mentioned payable to the person named therein or his order is in this Act referred to as a coupon payable to order.

A debenture under this Act shall not be issued for a less sum than the prescribed sum, or, where no sum is prescribed, than twenty pounds.

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(3.) *Debenture Stock.*

Sect. 6. Regulations as to debenture stock.

6. A debenture stock may be created and issued by a local authority having power to raise a loan or any part thereof by the issue of debenture stock. Such debenture stock shall be of a nominal amount, not exceeding the amount of money authorized to be raised by such stock, and shall, unless otherwise provided by the conditions of issue, be redeemable at par at the option of the local authority at such times and upon such conditions as the local authority may declare at the time of the issue thereof.

The title of any person to any share in debenture stock shall be evidenced by the entry in the register as in this Act mentioned of the name of such person as owner of such share.

Debenture stock shall bear such rate of interest, to be payable at such times as the local authority may declare at the time of issue of the stock.

Debenture stock and the interest thereon shall be a charge on the local rate or property specified at the time of the issue thereof, in the same manner as if it were a principal sum and interest charged thereon by deed.

Where debenture stock and the interest thereon is a charge on property other than the local rate, and it is intended that in default of the payment of the interest thereon, or for the purpose of raising the money required for the redemption of the stock, the property is to be sold, a declaration to that effect shall be made by the local authority at the time of the issue of the stock, and shall be deemed to form one of the conditions of such issue.

Debenture stock shall have all the incidents of personal estate, and shall subject to the provisions of this Act, be transferable by writing in manner directed by the local authority.

The interest on any share of debenture stock shall be recoverable by the owner of such share in the same manner in all respects as if such interest were an annuity of like amount secured to him by an annuity certificate under this Act.

The owner of any share in debenture stock shall not be entitled to require payment of the nominal amount of stock held by him, except at the time and upon the conditions declared by the local authority at the time of the issue of such stock.

The conditions of issue of debenture stock shall be declared by the local authority at the time of such issue, and a printed

copy of such conditions shall be supplied to every owner of debenture stock requiring the same, and shall be entered in the register of such stock.

The local authority may, if it thinks fit, on the application of the owner of any share in debenture stock, grant to him a certificate of title to his share in such stock, or any part of such share, with coupons attached entitling the bearer of the coupons to the interest on the share or part of a share specified in such certificate.

A certificate of title to a share in debenture stock under this section (in this Act called a stock certificate to bearer) shall entitle the bearer to the stock therein described, and to the interest thereon, and shall be transferable by delivery.

Any share in stock in respect of which a stock certificate to bearer has been issued, shall, so long as such certificate is outstanding, cease to be dealt with through the medium of the register.

Debenture stock, in respect of which a stock certificate to bearer has not been issued, is in this Act referred to as nominal debenture stock.

(4.) *Annuity Certificates.*

Regulations as to annuity certificates.

7. An annuity certificate under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such certificate specified with payment, as in the certificate mentioned, of the annual sum therein specified.

Where an annuity certificate under this Act charges property other than the local rate, and it is intended that in default of payment of the annual sum secured by such annuity certificate, or of some part thereof, the property is to be sold, a statement to that effect shall be inserted in the annuity certificate.

The annual sum may be made payable to the bearer of the certificate or to a person to be named therein, his executors, administrators, or assigns.

An annuity certificate in which the annual sum is made payable to the bearer shall be transferable by delivery.

An annuity certificate in which the annual sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal annuity certificate, and shall be transferable by writing in manner directed by the local authority.

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An annuity certificate under this Act shall not be issued for a less annual sum than the prescribed sum, or, where no sum is prescribed, than three pounds.

(5.) *Priority of Loans.*

Priority of loans.

8. All sums for the time being due or authorized to be raised on or in respect of any securities issued in respect of the same loan by a local authority under this Act shall be paid without any preference the one over the other by reason of the priority of date of any of such securities.

Where more than one loan has been raised under this Act by the same local authority, the sums for the time being due or authorized to be raised on or in respect of any securities issued in respect of each loan shall take priority according to the date of such loan.

Where any sum of money is authorized to be borrowed in manner provided by this Act, such sum may, unless it is otherwise prescribed, be raised under this Act as one loan or several loans, as may be deemed most convenient by the borrowing authority, so that the aggregate amount authorized to be borrowed be not exceeded.

The date of each loan shall, with a view to the priority of the loan and to the period within which such loan is to be discharged, and for the other purposes of this Act, so far as relates to that period, be fixed by the local authority, and may be so fixed irrespectively of the dates of the particular securities issued in respect of such loan, so that the period within which the loan is required to be discharged be not exceeded.

(6.) *Notice of Trusts.*

Notice of trust not receivable.

9. No notice of any trust, expressed, implied, or constructive, shall be received by the local authority, or by any registrar or officer of the local authority, in relation to any security issued by such authority under this Act.

Owners of securities not responsible for acts of local authority.

10. A person advancing any money to a local authority and receiving in consideration of such advance any security under this Act, shall not be bound to inquire into the application of the money advanced, or be in any way responsible for the non-application or misapplication thereof.

(7.) *Remedy for Non-payment.*

Sect. 11. Remedy by *mandamus* for non-payment of money.

11. The local authority shall pay or raise all sums for the time being due or authorized to be raised on or in respect of any security issued by them under this Act, and if default is made in payment of any sum so due, such sum shall be deemed to be a specialty debt due to the person entitled thereto from the local authority of such a nature that a *mandamus* will be granted to enforce the payment thereof; and an action may be brought accordingly, in which a *mandamus* may be claimed.

Remedy by appointment of receiver for non-payment of money.

12. Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or in respect of any security issued under this Act, the persons entitled to the said amount, or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the county court for the appointment of a receiver, and any receiver so appointed (subject to any direction which may be given by the court) shall from time to time raise as hereinafter mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is so in default, and all sums due while he is receiver on or in respect of any such security, together with all costs, charges, and expenses incurred in or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the balance, if any, remaining in his hands after making the said payments.

Where the amount so due or authorized to be raised is charged on the local rate, the receiver may raise the money he is authorized to raise under this section by means of the local rate, and for that purpose shall have the same power as the defaulting authority of levying the local rate, and the receiver shall have such access to and use of the documents of the defaulting authority relative to the local rate as he may require.

Where the amount so due or authorized to be raised is charged on any property, other than the local rate, the receiver may raise the sum which he is authorized to raise under this section by receipt of the rents and profits of the property, and if the security involves a power of sale, as in this Act mentioned,

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by sale of the property in such manner and subject to such conditions of sale and otherwise as the court may direct.

A county court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within the jurisdiction of such court, and may remove such receiver and appoint another in his stead, and so from time to time; and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect.

(8.) *Discharge of Loan.*

Loan borrowed to be discharged within prescribed period.

13. Every loan borrowed in manner provided by this Act shall be discharged within the prescribed period from the date thereof, and if no period is prescribed, within the period of twenty years from the date thereof, which period of twenty years shall for the purposes of this Act be included under the term "prescribed period," and such discharge shall be secured by one or more of the following methods; that is to say,

By the issue of annuity certificates limited to expire within the prescribed period; or,

By the issue of debentures made payable in such a manner that in each year such number of debentures will become due and be paid off as will secure the payment of the whole sum secured by such debentures by equal annual instalments, extending over the whole of the prescribed period, or over a less time than the prescribed period; or

By the annual appropriation, as in this Act mentioned, of a fixed sum to the discharge of a certain portion of such loan; or

Where a sinking fund is prescribed, but not otherwise, by the establishment of a sinking fund and the application thereof in manner in this Act mentioned.

Discharge of loan by appropriation of annual sum.

14. Where a fixed annual sum is appropriated to the discharge of a loan, or part of a loan, the local authority shall raise in every year an equal sum of money of such amount as will, at or before the expiration of the prescribed period, pay off the whole of such loan or part of a loan, and the interest thereon. The local authority shall in each year pay out of such

fixed sum the interest due on the loan or part of a loan during the current year, and appropriate the residue of such sum, in the case of money borrowed on debentures, to the payment off of a corresponding amount of the principal sum secured by such debentures, and in the case of money borrowed by the issue of debenture stock to the redemption of a corresponding amount of such stock.

The debentures or portion of debenture stock to be paid off in every year shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn in presence of the local authority, and any owners of debenture or debenture stock who choose to be present; the local authority shall cause not less than one month's previous notice of the time and place at which lots are to be drawn to be given by advertisement, published once at the least in each of four successive weeks in some newspaper circulating in the district within which the local authority has jurisdiction.

Any fractional sum remaining of such residue as aforesaid, after payment of the debentures or debenture stock, payable as aforesaid, shall be carried to the credit of the annual sum to be raised in the ensuing year. All expenses incurred by the local authority in respect of any drawings by lot or otherwise in respect of the discharge of a loan shall be paid out of the current revenue of the local authority.

Discharge of loan by sinking fund

15. Where a sinking fund is prescribed for any loan or part of a loan, the local authority shall create a sinking fund as hereinafter mentioned; that is to say,

(1.) Such equal yearly or half-yearly sums shall be paid into the sinking fund in each year as, being accumulated at compound interest at the prescribed rate, or if no rate is prescribed, at such rate as in the opinion of the local authority, (regard being had to the securities in which they are authorized to make investments,) will at the expiration of some period not longer than the prescribed period, be sufficient, after payment of all expenses, to discharge such loan or part of a loan; and,

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(2.) The first of such payments shall be made within one year from the date of the loan; and,

(3.) All sums paid into the sinking fund shall be as soon as may be, invested by the local authority in the prescribed manner, and if no manner is prescribed, or if a manner having been prescribed, the Local Government Board shall assent, in securities in which trustees are by law for the time being authorized to invest, or in debentures, debenture stock, or annuity certificates issued under this Act, and any such investments may be from time to time varied or transposed, and all dividends and other annual sums received in respect of such investments shall, as soon as may be after they are received, be paid into the sinking fund and invested by the local authority in like manner; and,

(4.) The local authority may from time to time apply the sinking fund, or any part thereof, in or towards the discharge of the loan or part of a loan for which it was created, and until such loan or part is wholly discharged shall not apply the same for any other purpose:

(5.) The debentures or portion of debenture stock, to the payment of which such sinking fund is for the time being applicable, shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn and notice shall be given in manner hereinbefore in this Act mentioned:

(6.) Any surplus of the sinking fund remaining after the discharge of the loan or part of a loan for the discharge of which it was created shall be paid into some other sinking fund under the control of the local authority, or if there is no such fund shall be applied to any purpose to which such loan is applicable, or otherwise, as the local authority may, with the assent of the Local Government Board, think expedient:

(7.) Where any part of the sinking fund is invested in any securities of the local authority, or is applied in paying

off any part of the loan before the prescribed period, the interest which would otherwise be payable on such securities or on such part of the loan shall be paid into the sinking fund and invested in manner provided by this Act:

(8.) If the annual income of the sinking fund is not less than the annual interest payable on so much of the loan or part of the loan in respect of which it was created as remains undischarged, the equal annual sums required by this section to be paid into the sinking fund may cease to be so paid.

Annual return as to sinking fund.

16. Where a sinking fund is created for the purpose of discharging any loan or part of a loan the local authority shall, until such loan or part of a loan is discharged, within twenty-one days after the expiration of each year, transmit to the Local Government Board a return in such form and verified in such manner as the Board from time to time directs, showing the amount which has been invested or applied for the purpose of such sinking fund during the year next preceding the making of such return, and the description of the securities upon which any investment has been made, and the purposes to which any portion of the sinking fund has been applied during the same period, and the total amount (if any) remaining invested at the end of the year. If it appears to the Local Government Board, by such return or otherwise, that the local authority have failed to comply with the provisions of this Act with respect to the sinking fund, that Board may, if they think fit and after hearing the local authority, if desirous to be heard, by order direct that the sum in respect of which default has been made is to be raised and invested or applied as part of the sinking fund, and any such order may be enforced by *mandamus*.

Supplemental Provisions.

(1.) *As to Coupons.*

Temporary issue of coupons.

17. Coupons in respect of any debenture or stock certificate to bearer under this Act may be issued comprising the interest payable during the whole period of years for which the debenture or stock certificate is in force, or any less period, and at the expiration of any such less period fresh coupons may be

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issued in respect of the debenture or stock certificate, or such debenture or stock certificate may be exchanged for another debenture or stock certificate with coupons for a further period.

Endorsement and crossing of coupons.

18. A coupon payable to order, which when presented for payment purports to be endorsed by the person named therein, shall be a sufficient authority to the person paying the money to pay the amount due in respect of such coupon to the bearer thereof, and it shall not be incumbent on the person paying such coupon to prove that such endorsement or any subsequent endorsement was made by or under the direction or authority of the person who is named in the coupon, or to whom the coupon was made payable by any endorser.

Where a coupon bears across its face an addition in written, printed, or stamped letters of the name of any banker or of the words "and company" in full or abbreviated, between two transverse lines, such addition shall be deemed to be a material part of the coupon, and have the force of a direction to the person by whom such coupon is to be paid that the same is to be paid only to or through the banker named, or if none is so named, to or through some banker, and the same shall be payable only to or through the banker named or some banker.

Coupons issued in respect of a security are exempt from stamp duty as if attached thereto.

19. Any coupons issued in respect of any debenture or stock certificate to bearer under this Act shall for the purpose of the Acts relating to stamp duties be deemed to have been attached to and issued with such security.

(2.) *As to Stock Certificates.*

Conversion into nominal debenture stock of stock in certificate to bearer.

20. The bearer of a stock certificate to bearer may, on delivery to the local authority of his certificate and of all unpaid coupons belonging thereto, require the local authority to enter him in the register of the local authority as an owner of the share of stock described in the stock certificate to bearer, and thereupon that stock shall become nominal debenture stock and the interest thereon shall be payable as if no stock certificate to bearer had been issued in respect of that share of stock.

Trustee not to apply for stock cer-

21. A trustee of debenture stock shall not apply for or hold a stock certificate to bearer unless authorized to do so by the terms of his trust, and any contravention of this provision by a

trustee shall be deemed a breach of trust. But this provision shall not impose on the local authority an obligation to inquire whether a person applying for a stock certificate to bearer is or is not a trustee, or subject the local authority to any liability in the event of their issuing a stock certificate to bearer to a trustee, or invalidate any stock certificate to bearer issued.

Stock certificate to bearer.

(3.) *As to Execution and Supply of Securities.*

22. Every debenture, stock certificate to bearer, and annuity certificate under this Act shall be deemed to be well executed if under the common seal of the local authority, where that authority is a body corporate, and if signed by two or more members of the local authority, where the local authority is not a body corporate, or if otherwise executed in such manner as the Local Government Board may direct on the application of any local authority, whether corporate or unincorporate.

Execution and supply of securities.

The Commissioners of Inland Revenue may, when required by any local authority, and on payment of such sum as may, with the sanction of the Treasury, be agreed upon, supply such authority with debentures, stock certificates to bearer, coupons, and annuity certificates under this Act in such form and of such materials as the local authority may direct.

(4.) *As to Register of Nominal Securities.*

23. A local authority issuing nominal debentures, nominal debenture stock, or nominal annuity certificates under this Act, shall cause a register of such securities to be kept in one or more book or books, and there shall be entered in such register—

Register of nominal securities.

(1.) The names and addresses and the descriptions of the owners for the time being of every such security, with a statement of the security held by each person registered, and

(2.) The date at which the name of any person was entered in the register in respect of any such security.

The register under this section shall be evidence of any matters by this Act directed or authorized to be inserted therein.

24. Any person may inspect the register at any reasonable time upon payment of such fee not exceeding one shilling as may be fixed by the local authority, and shall be entitled to

Inspection of register.

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obtain from the registrar, copies or extracts certified by him to be true copies or extracts of such register, upon payment of such fee not exceeding two shillings and sixpence, and twopence for every folio of seventy-two words, as the local authority may from time to time fix, and any copy or extract so certified shall be admissible in evidence.

Rectification of register.

25. If the name of any person is without sufficient cause entered in or omitted from the register, or if default is made or unnecessary delay takes place in making any entry in such register, the person aggrieved or the local authority may apply to the court for an order that the register may be rectified.

The court may either refuse the application with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, whether there has or has not been any default on the part of the registrar, make an order for the rectification of the register, and make such order as to the payment of the costs of the application or of damages to the person aggrieved as to the court may seem just.

The court may, in any proceeding under this section, decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, and generally any question which it may be necessary or expedient to decide for the rectification of the register.

The court for the purposes of this section means any of Her Majesty's superior courts of law or equity, or any court to which the jurisdiction of such courts may be transferred, and where the value of any security or securities to which the application relates does not exceed fifty pounds shall include a county court, and the jurisdiction by this Act given to a superior court may be exercised in a summary manner by any judge or judges of such court sitting in chambers or otherwise.

(5.) *As to Loans under Official Sanction.*

Permissive issue of securities under official sanction.

26. Any local authority about to raise a loan by the issue of any securities under this Act may apply to the Local Government Board to authorize the issue of such securities under official sanction.

The Local Government Board, before granting their official sanction to such issue, shall require the local authority to furnish in such form, and with such particulars, and supported by such evidence as the Local Government Board may require,

such returns of the financial condition of such authority and borrowing powers of such authority and of the indebtedness of such authority, whether incurred before or after the passing of this Act, and such other particulars as will enable the Local Government Board to ascertain the facts required by this section to be stated in relation to such issue, and the Local Government Board may make such examination or inquiries for ascertaining the said matters and the accuracy of such returns as they may think expedient, and they shall not give their sanction unless they are satisfied with the information given and the result of the inquiries made.

The issue of any securities under official sanction shall be authenticated by an official stamp on such securities or otherwise as the Local Government Board may from time to time direct.

The sanction of the Local Government Board given in respect of any securities shall be conclusive evidence that the local authority by whom such securities may be issued had power to issue the same, and that the same have been duly issued, and are as to form and otherwise in conformity with this Act.

The owner of any security issued under official sanction shall on request made by him to the Local Government Board be furnished with a statement of the following particulars; that is to say,

Where a security is charged on a rate, of the rateable value, at the date of the issue of such security, of the property subject to the rate, and where the security is a charge on property, of the estimated value of such property; also of

The relative priority of the loan, in respect of which such security is issued, and of the other loans (if any) of the borrowing authority;

and such statement shall be evidence of the particulars therein stated.

(6.) *As to Investments on Loans under Act.*

Power for trustees to invest in loans under Act.

27. Any trustees or other persons for the time being authorized or directed to invest any moneys in the debentures or debenture stock of any railway or other company shall, unless the contrary is provided by the instrument authorizing or directing such investment, have the same power of investing such moneys in any nominal debentures or nominal debenture

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stock issued under this Act as they have of investing such moneys in debentures or debenture stock of any railway or other company as aforesaid.

Power for public works loan commissioners to take securities under Act.

28. When the Public Works Loan Commissioners are authorized to grant any loan to a local authority under any Act, passed either before or after the passing of this Act, and are satisfied with the sufficiency of the rates or other property on which such loan is charged to defray the loan, they may, notwithstanding anything contained in any other Act of Parliament, take debentures, debenture stock, or annuity certificates under this Act as a security for such loan.

(7.) *As to General Rules.*

Application of rules in schedule.

29. The general rules in the schedule to this Act with respect to the transfer and transmission of nominal securities shall have the same force as if they were enacted in the body of this Act.

Power to make general rules.

30. The local authority may from time to time, with the consent of the Local Government Board, make, and when made, add to, rescind, or alter, such rules as they think fit with respect to the following matters:

(1.) The issue of coupons, the registry of securities, the mode of transferring securities not transferable by delivery, the fees, if any, to be charged in respect of registry and otherwise in respect of any security issued by them under this Act; and,

(2.) With respect to any matter or thing required for the purposes of carrying into effect this Act, and not inconsistent therewith.

The local authority may also by such rules as aforesaid add to, rescind, or alter any of the rules in the schedule hereto.

Any general rules made by the local authority in pursuance of this section shall, so far as they are consistent with this Act, have the same force as if they were enacted therein.

Provided, that any rules made, added to, rescinded, or altered in pursuance of this section shall not affect any securities issued in respect of any loan the date of which is prior to the date of such making, addition, recission, or alteration.

(8.) *As to Borrowing.*

Sect. 31. Borrowing and re-borrowing by local authorities.

31. Any local authority, notwithstanding any provision in any other Act of Parliament passed before the passing of this Act, may, if it thinks fit, borrow in manner provided by this Act any loan which it is authorized to borrow.

Any local authority may from time to time in like manner re-borrow money for the purpose of discharging any loan lawfully contracted by them either before or after the passing of this Act; provided that the time for repayment of any money so borrowed shall not be extended beyond the unexpired portion of the term for which the original loan was contracted, unless with the sanction of the Local Government Board, and in no case shall be extended beyond the prescribed period.

(9.) *As to Forgery and Loss of Securities.*

Forgery of securities.

32. For the purposes of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the statute law of England relating to indictable offences by forgery," debenture stock under this Act shall be deemed to be capital stock of a body corporate, and any other security issued in pursuance of this Act shall be considered to be a writing obligatory, and any coupon bearing across its face an addition in written, printed, or stamped letters of the name of any banker, or of the words "and company" in full or abbreviated, between two transverse lines, shall be deemed to be a cheque or draft on a banker.

Loss of securities.

33. If any security issued under this Act is lost, mislaid, or destroyed, the local authority shall, on such indemnity being given as they may require, and on payment of the expense of the issue, issue a fresh security in the place of the security so lost, mislaid, or destroyed.

(10.) *Definitions.*

Definitions.

34. For the purposes of this Act—

"Prescribed" means prescribed by any Act passed either before or after the passing of this Act authorizing a local authority to borrow money:

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Sect. 34.

"Local authority" means the justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, the council of any municipal borough, also any authority whatsoever having power to levy a rate, as in this Act defined, also any prescribed authority:

"Municipal borough" means any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and any Acts amending the same:

A "rate" means a rate the proceeds of which are applicable to public local purposes and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate, and the levy of a rate includes the issue and enforcement of any such precept, certificate, or document as aforesaid, and expressions relating to the levy and the assessment and making of a rate shall be construed accordingly:

"Local rate" means any rate as before defined which a local authority have power to levy or charge by way of mortgage or otherwise:

"Security" means any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer issued under this Act:

"Person" includes a body of persons corporate or unincorporate:

"Executors and administrators" includes successors.

(11.) *Repeal and consequential Enactment.*

Repeal of 36 & 37 Vict. c. 35.

35. The County Debentures Act, 1873, is hereby repealed, as from the commencement of this Act; but this repeal shall not abridge or prejudicially affect the incorporation of any county authority under that Act, or any right in respect of any debenture issued in pursuance of that Act before the commencement of this Act, or any remedy for non-payment of moneys

secured by any such debenture, and all such rights and remedies may be enforced as if this Act had not been passed.

Incorporation of county authority for purposes of Act.

36. The justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, issuing any securities under this Act, shall, so far as relates to such securities, be deemed to be incorporated by the name of the justices of the county, liberty, riding, parts, or division of the county to which they belong, or by any other name by which such justices are ordinarily known, or by which they granted the said securities, and may sue and be sued in any action or other legal proceeding relating thereto by such corporate name.

As to the stamp duties payable in respect of debentures issued under this Act, *see* the Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), and the Customs and Inland Revenue Act, 1881 (44 Vict. c. 12).

PAYMENT OF CLERKS OF THE PEACE AND OF CLERKS TO JUSTICES BY FEES OR SALARY.

14 & 15 VICT. CAP. 55.

An Act to amend the Law relating to the Expenses of Prosecutions, and to make further Provision for the Apprehension and Trial of Offenders, in certain Cases.

[1st August, 1851.]

Those sections only of this Act which relate to the payment of clerks of the peace and clerks to the justices are set forth.

Clerks of the peace, &c., may be paid by salaries in lieu of fees.

9. And whereas it may be expedient to authorize the payment of clerks of the peace and such other clerks as hereinafter mentioned by salaries instead of fees: be it enacted, that it shall be lawful for the justices of the peace at their general or quarter sessions for the several counties, ridings, divisions of counties, and liberties throughout England and Wales, notice being given at the preceding quarter sessions that a motion will be made for such purpose, and the council or other governing body in every borough in England and Wales, from time to time, if they see fit so to do, to recommend to one of Her

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Majesty's principal Secretaries of State that the clerks of the peace, the clerks of special and petty sessions, and the clerks of the justices of the peace within their several jurisdictions, or any of such clerks as aforesaid, be paid by salaries in lieu of fees and other payments, or where any such clerks are for the time being paid by salaries, by virtue of any order made under this Act or otherwise, to recommend that the amounts of all or any of the salaries for the time being payable be reconsidered, or that all or any of such clerks for the time being paid by salaries be paid by fees in lieu of salary, and where payment by salary in lieu of fees or the reconsideration of the amounts of any salaries is recommended, to state the amount of salary which in the opinion of such justices, council, or governing body should in each case be paid; and every such recommendation being signed by the chairman of the court of general or quarter sessions, or the mayor or other head officer of the borough, shall be transmitted to the Secretary of State; and it shall be lawful for such Secretary of State, when any such recommendation is so made to him, by order under his hand, if he so think fit, to direct that all or any of the clerks to which such recommendation refers be paid by salary, and to fix the amount of salary to be so paid, or vary the amount of salary for the time being payable to any such clerk, or to direct that any such clerk for the time being paid by salary be paid by fees in lieu of salary; and such Secretary of State shall cause copies of every order made under this enactment affecting any clerk of the peace, or any clerks of special sessions or petty sessions, or clerks to the justices within the district of any clerk of the peace, to be transmitted to such clerk of the peace, to be by him distributed, where occasion shall require, to such other clerks as aforesaid; and the salary for the time being payable to any such clerk under any such order shall be paid out of any county rate or rate in the nature of a county rate made in the county, riding, division, or liberty, or out of the borough fund of the borough, as the case may be, for or in which such clerk of the peace or other clerk to whom the same is payable is appointed or acts: provided always, that in fixing the amount of any salary to be paid to any clerk of the peace or other clerk appointed before the passing of this Act regard shall be had to the tenure of his office and to his rights in respect thereof, but no clerk of the peace or other such clerk as aforesaid appointed after the passing of this Act shall be entitled to any compensa-

tion on account of any reduction of his emoluments occasioned by any order made under this enactment: provided also, that no order shall be made in pursuance of any recommendation of the council or governing body of any borough in relation to the mode of payment or the amount of salary of any such clerk other than the clerk of the peace for such borough, unless the justices of such borough at a meeting of such justices approve of such recommendation, and such approval be certified to such Secretary of State, under the hand of the chairman of such meeting.

This section is materially modified by the 10th section of 40 & 41 Vict. c. 43, *post*.

Certain business may be excepted in fixing the salaries.

10. Provided that any such court of sessions, or council, or governing body may, where they see fit, recommend that any description (to be specified in the recommendation) of the business of any clerk whom they may recommend to be paid by salary should not be included in fixing the amount of such salary, but that such clerk should be remunerated for the same by such fees or other payments as may be payable to him in respect thereof; and where any order is made by the Secretary of State in pursuance of such recommendation as last aforesaid, such clerk shall be entitled to receive, for his own use, the like fees or payments in respect of the business in such recommendation specified in this behalf as he would be so entitled to receive if not paid by salary; and, save as aforesaid, where any clerk is paid by salary under any order made by virtue of this Act, such salary shall include and be deemed the remuneration for all business which such clerk may, by reason of his office, be called on to perform; and no other payment shall be made for any such business, or for or to a deputy of any such clerk.

See 40 & 41 Vict. c. 43, s. 10, *post*.

Clerks paid by salaries to account for fees.

11. Save as hereinbefore provided, all the fees which any such clerk as aforesaid would have been for the time being entitled to receive to his own use if such order had not been made shall, so long as any order for payment of such clerk by salary in lieu of fees is in force, be by him received and paid in any county, riding, division, or liberty to the treasurer in aid of the county rate or rate in the nature of a county rate of such

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county, riding, division, or liberty, and in any borough to the treasurer in aid of the borough fund, and such fees shall be accounted for from time to time in such manner and under such regulations as the justices at quarter sessions, or in any borough the council or other governing body, may direct.

See 40 & 41 Vict. c. 43, s. 9, *post*.

Fees may be remitted by justices.

12. Where any clerk is paid by salary by virtue of any order made under this Act, any justices or justice before whom any proceeding is had, whereon a fee is payable which should be accounted for by such clerk under this Act, or before whom any person is summoned for non-payment of any such fee, may remit such fee in whole or in part for poverty or other reasonable cause, in their or his discretion, and in every such case the justices or justice by whom any fee is wholly or in part remitted shall cause an entry to be made, in a book or books to be kept for that purpose by such clerk, of the nature and amount of the several fees so remitted, and of the reason for the remission in such case, which entry shall be signed by the justice, or two or more of the justices authorizing such remission, and shall be a sufficient voucher to discharge the clerk therefrom.

THE JUSTICES CLERKS ACT, 1877.

40 & 41 VICT. CAP. 43.

An Act to amend the Law with respect to the Appointment, Payment, and Fees of Clerks of Justices of the Peace and Clerks of Special and Petty Sessions.

[10th August, 1877.]

14 & 15 Vict. c. 55.

WHEREAS by section nine of the Act of the session of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter fifty-five, intituled "An Act to amend the law relating to the expenses of prosecutions, and to make further provision for the apprehension and trial of offenders in certain cases," (in this Act referred to as "the principal Act,") it is provided that one of Her Majesty's principal Secretaries of State (in this Act referred to as a Secretary of State), upon the

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recommendation of the justices, council, or other governing body as therein mentioned (in this Act referred to as "the local authority") may, by order, direct that the clerks of special and petty sessions and the clerks of justices of the peace within the jurisdiction of such local authority, or any of such clerks, are to be paid by salaries in lieu of fees and other payments, and fix the amount of salary so to be paid:

And whereas by the same Act the Secretary of State is authorized, on the recommendation of the local authority as therein mentioned, to order that certain business specified in the recommendation should not be included in fixing the salary of any clerk, and that such clerk should be paid for that business (in this Act referred to as excepted business) by fees and not by salary:

And whereas it is expedient to provide that all the said clerks should be paid by salary in lieu of fees, and to provide for the qualification, appointment, and fees of the said clerks:

Be it therefore enacted:

Short title.

1. This Act may be cited as the Justices Clerks Act, 1877.

Payment of clerks of petty sessions, &c., by salary under 14 & 15 Vict. c. 55, s. 9, made compulsory.

2. Where at the passing of this Act an order under the principal Act is not in force for the payment by salary in lieu of fees of any clerk of special or petty sessions or clerk of justices of the peace within the jurisdiction of any local authority, that local authority shall, as soon as may be after the passing of this Act, and in any case before the first day of February one thousand eight hundred and seventy-eight, make a recommendation to a Secretary of State in pursuance of the principal Act with respect to the payment of such clerk by salary in lieu of fees, and the Secretary of State shall make an order directing such payment: and if, in the case of any of the said clerks, such recommendation as enables a Secretary of State to make an order under the principal Act is not received by the Secretary of State before the said first day of February, the Secretary of State shall, in like manner (so nearly as circumstances admit) as if such recommendation had been duly made, make an order under the principal Act, directing the payment of such clerk by salary in lieu of fees for all business (other than the business of giving copies of depositions, if that business is excepted by the order) and fixing the amount of the salary.

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Every such salary may, if it is thought fit, be made to vary according to the number of cases or amount of business.

Subject as aforesaid, every such salary shall be deemed to accrue from day to day and shall be paid quarterly, or at such less intervals as may be from time to time fixed by the local authority.

Provision as to clerks of petty sessions partly paid by salary under 14 & 15 Vict. c. 55, ss. 9, 10, or paid under a special Act.

3. Where at the passing of this Act an order is in force under the principal Act for the payment of any clerk of special or petty sessions or clerk of justices of the peace by salary in lieu of fees, but an order has been made that such clerk should be paid for certain excepted business (other than that of giving copies of depositions) by fees and not by salary, this Act shall, so far as is consistent with the tenour thereof, apply, as regards the fees for the excepted business, in like manner as it applies where an order is not in force for the payment of a clerk by salary in lieu of fees.

Where any such clerk as aforesaid is, in pursuance of any Act of Parliament (other than the principal Act), paid by salary in lieu of fees, either for all business, or for all business other than that of giving copies of depositions, that clerk shall continue to be paid by salary in lieu of fees for all such business, and a recommendation need not be made with respect to such clerk in pursuance of this Act.

Provision as to clerk of petty sessions, &c., paid by salary by arrangement.

4. Where at the passing of this Act any clerk of special or petty sessions or clerk of justices of the peace is by arrangement paid by salary in lieu of fees, either for all business, or for all business other than that of giving copies of depositions, that clerk shall continue to be paid by salary in lieu of fees for all such business, and unless a Secretary of State requires a recommendation to be made with respect to such clerk in pursuance of this Act, such arrangement shall have effect as if it were an order of the Secretary of State under the principal Act, and this Act shall apply accordingly.

Sect. 5 relates to the appointment of one salaried clerk only in a petty sessional division.

Payment to treasurer of county or borough of

6. All penalties, costs, and sums which, in pursuance of a conviction or order by a justice or justices of the peace, are paid to a clerk of a petty sessional division, or a clerk of special

unclaimed penalties and other sums.

sessions; or a clerk of petty sessions, or a clerk of any justice or justices of the peace, and are not actually paid by him to the party or parties by law entitled thereto, other than the treasurer hereinafter mentioned, shall be paid to the treasurer of the county, riding, division, liberty, city, borough, or place for which such justice or justices acted, subject nevertheless to be paid by such treasurer, to any party showing himself to be by law entitled thereto.

Every such clerk shall account for and pay over all penalties, costs, and sums payable to any such treasurer, under this or any other Act, at such times and in such manner as may be from time to time directed by the justices or council who appointed that treasurer, and if he wilfully omits to account for or pay over any such penalty, costs, or sum, he shall forfeit for every such omission twenty pounds, to be recovered by action of debt by any person who may sue for the same.

Sect. 7 relates to the qualification of clerks to justices.

Power of local authority and Secretary of State as to table of fees and adjustment of fees in proportion to salary of clerks. 11 & 12 Vict. c. 43.

8. Whereas by section thirty of the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," provision is made for the making of tables of the fees to be paid to the clerks of special and petty sessions, and to the clerks of justices of the peace, and it is expedient to make such further provision as is hereinafter mentioned concerning the same; be it therefore enacted as follows:

The said section thirty is hereby repealed so far as relates to clerks of special and petty sessions and clerks of justices of the peace, without prejudice to anything done in pursuance of that section.

Where it appears to a local authority that the aggregate amount received by the treasurer of that authority in respect of court fees unduly exceeds or unduly falls below the aggregate amount paid by that authority by way of salary to the clerks of petty sessional divisions, or in the case of a borough to the clerk to the justices of the borough, or that otherwise it is expedient so to do, the local authority may make a table of the court fees which in their opinion should be taken, and shall cause such table, signed by the chairman, mayor, or other presiding officer

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of the local authority, to be laid before a Secretary of State, and a Secretary of State may, if he think fit, alter such table of fees and settle the same (having due regard to the relation of the aggregate amounts so received and paid as aforesaid), and certify that the fees in the table as settled by him are proper to be taken within the jurisdiction of the said local authority.

Where complaint is made to a Secretary of State that the aggregate amount received by the treasurer of a local authority in respect of court fees unduly exceeds or unduly falls below the aggregate amount paid by that authority by way of salary as aforesaid, or that for other reasons it is expedient that the table of court fees should be revised, he may, if he think fit, by order, require the local authority to make a return to him within the time specified in the order of the aggregate amount so received and paid during three years previous to the order, or of the table of court fees in force for the time being, as the case may be, and if, on receiving such return, or on the failure of the local authority to make the return, he is, after making such inquiry as he thinks proper, satisfied of the truth of the complaint, he may, by order, require the local authority to make and lay before him, within the time (not being less than four months from the date of the order) specified in the order, a table of court fees in pursuance of this section, and if the local authority fail to comply with the order, he may, in like manner (so nearly as circumstances admit) as if the local authority had laid before him a table of fees in pursuance of this section, settle a table of fees and certify that the fees in that table are proper to be taken within the jurisdiction of the said local authority.

A Secretary of State, upon certifying a table of fees in pursuance of this section, shall cause copies thereof to be sent to the clerk of the local authority to be by him distributed to the clerks of petty sessional divisions and clerks to justices within the jurisdiction of that authority, and if at any time thereafter any of those clerks or any other person wilfully demands or receives any other or greater court fee than such as is set down in the said table, he shall forfeit for every such demand or receipt twenty pounds, to be recovered by action of debt by any person who may sue for the same.

Until a table is made in pursuance of this section, any of the

said clerks may demand and receive such fees as he is at the passing of this Act lawfully authorized to demand and receive.

The expression "court fee" in this section means any fee, gratuity, or sum which may by law be demanded or received in respect of any business or act transacted or done by a clerk of special or petty sessions or a clerk of justices of the peace as such clerk, notwithstanding that by reason of such clerk being paid by salary, or of the provisions of this Act, he cannot receive the same for his own use, and includes fees for the giving of copies of depositions by any clerk mentioned in this section, whether received for his own use or not.

Account of fees by clerk.

9. The account of fees required by section eleven of the principal Act, as amended by this Act, to be rendered by any clerk shall be rendered quarterly, or at any less interval directed by the local authority, and if any clerk wilfully omits from any such account any fee received by him he shall forfeit for every such omission twenty pounds, to be recovered by action of debt by any person who may sue for the same.

Construction of Act, and repeal of part of 14 & 15 Vict. c. 55

10. This Act shall, so far as is consistent with the tenour thereof, be construed as one with the principal Act; and so much of sections nine and ten of the principal Act as empowers a Secretary of State to direct that a clerk be paid by fees in lieu of salary (either generally or in respect of excepted business) is hereby repealed.

The effect of this and the preceding Act is to make the payment of the clerk to the justices by salary compulsory, whilst the clerk of the peace *may* be paid by salary if the local authority should take action under the 9th section of the 14 & 15 Vict. c. 55.

Appendix.

COUNTY AND BOROUGH POLICE.

3 & 4 VICT. CAP. 88.

An Act to amend the Act for the establishment of County and District Constables. [7th August, 1840.]

* * * * *

Sect. 14. Boroughs may agree to consolidate their police with county police.

14. And be it enacted, that it shall be lawful for the justices of any county in which constables shall have been appointed under the said Act, and for the council of any incorporated borough situated in or adjoining to such county, to agree together for the consolidation of the county and borough police establishments; and in every such case all the constables appointed either for the county or the borough shall have all the powers, privileges, and duties throughout the county and the borough which constables appointed for any county have within that county under the said Act, and all the provisions of the said Act shall be taken to apply to the borough constables as well as to the county constables, except as is herein otherwise provided; and every such agreement which shall have been agreed to by the justices of the county in general or quarter sessions assembled, on the one hand, and by the mayor, aldermen, and burgesses of the borough, by their council, on the other hand, shall be binding on both parties, as soon as a memorandum of such agreement under the hands of two or more justices of the county, and countersigned by the clerk of the peace, shall be delivered to the council of the borough, and a counterpart thereof under the common seal of the borough shall be delivered to the justices; and when any such agreement shall have been made between any county and any borough, either party shall be empowered to put an end thereunto, without the consent of the other party, after six months' notice in writing shall have been given to the other party; such notice, if given by the county, to be under the hands of two or more justices, and countersigned by the clerk of the peace, or if given by the borough, to be under the common seal of the borough: provided always, that no such notice shall be given by the justices or by the borough, unless in either case such notice shall be agreed upon by a majority of three-fourths of the justices attending at any general or quarter session, or three-fourths of the council of the borough.

Sect. 20 of 19 & 20 Vict. c. 69, provides that no agreement made under this section shall be determined without the consent of the Secretary of State.

Sect. 15. Government of consolidated police.

15. And be it enacted, that in all cases where the establishment of county and borough constables shall be consolidated into one police establishment, the chief constable of the county shall have the general disposition and government of all such constables, subject to the provisions hereinafter contained, and at his pleasure may dismiss all or any of them; and whenever the chief constable shall dismiss one of the borough constables he shall report the fact, with his reasons for the dismissal, to the mayor of the borough, and the watch committee of the borough shall forthwith appoint another constable properly qualified, unless provision shall be made in such agreement that all constables shall be appointed by the chief constable; and no borough constable who shall have been dismissed by the chief constable shall be capable of being re-appointed for the same borough without the consent of the chief constable; and so much of the said Act for regulating corporations as empowers the said committee, or any two justices of the peace having jurisdiction within the borough, to dismiss any constable, shall be suspended, as to those boroughs whose establishment of constables is consolidated with the establishment of county constables, during the time that any agreement for such consolidation shall be in force.

The Act here referred to is the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), repealed by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50). By the last-mentioned statute (sect. 191) its provisions are substituted for those of the Act of 1835.

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19 & 20 VICT. CAP. 69.

An Act to render more effectual the Police in Counties and Boroughs in England and Wales.

[21st July, 1856.]

* * * * *

Her Majesty in Council, on representations from boroughs, may arrange terms of consolidation with counties.

5. In case it be represented to one of Her Majesty's principal Secretaries of State by the council of any borough, that application has been made by such council to the justices of any county in or adjoining to which such borough is situate, to consolidate the police of such county and borough in the manner provided by the fourteenth section of the said Act of the third and fourth years of Her Majesty, and that such consolidation has not been effected, it shall be lawful for such principal Secretary of State

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to inquire into the terms of consolidation proposed, and to report thereon to Her Majesty in Council; and it shall be lawful for Her Majesty, with the advice of Her Privy Council, to fix the terms and conditions and date upon and from which such consolidation shall take effect, and thereupon the provisions of such last-mentioned Act shall become applicable as if such consolidation had been effected by an agreement made under the said section, save so far as such provisions relate to the determination of such agreement; and it shall be lawful for Her Majesty, with the advice of Her Privy Council, at any time and from time to time to vary the terms of any such consolidation, or at any time to determine such consolidation upon such terms as to Her Majesty in Council may seem just.

Power to Her Majesty to vary such terms from time to time.

County constables to have the like powers, &c., in boroughs as borough constables have in the county.

6. The constables of every county appointed under the said Acts of the second and third and third and fourth years of Her Majesty or either of them, or this Act, shall have, in every borough situate wholly or in part within such county, or within any county or part of a county in which they have authority, all such powers and privileges and be liable to all such duties and responsibilities as the constables appointed for such borough have and are liable to within any such county, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within any such borough in which they shall be called on to act as constables, for conducting themselves in the execution of their office.

The Acts referred to are the 2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; and the 5 & 6 Will. 4, c. 76, for which last statute the provisions of the Municipal Corporations Act, 1882, are substituted.

Constables to perform duties connected with the police as directed by justices or watch committees.

7. The constables acting under the said Acts of the second and third and third and fourth years of Her Majesty, the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts, shall, in addition to their ordinary duties, perform all such duties connected with the police in their respective counties or boroughs as the justices in general or quarter sessions assembled, or the watch committees of such respective counties or boroughs, from time to time direct and require.

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Constable not to receive to his own use fees for performance of his duties.

8. It shall not be lawful for any constable acting under the said Acts of the second and third and third and fourth years of Her Majesty, and the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts (other than a local constable appointed under the said Act of the third and fourth years of Her Majesty), to receive to his own use any fee for the performance of any act done by him in the execution of his duty as such constable; but this enactment shall not extend to prevent the receipt by any such constable of any fee or other payment legally payable which he may be liable to account for and pay over to the treasurer of the county or borough, or otherwise for the use of the county or borough, or which may be payable to, or applied in aid of, any police superannuation fund established or to be established in any borough, under the provisions of the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter fourteen, or of any local or other Act of Parliament.

See note to sect. 6, *supra*.

Borough constables disqualified from voting at certain elections.

9. No head or other constable already appointed or hereafter to be appointed for any borough, under the said Act of the fifth and sixth years of King William the Fourth, except special constables, shall, during the time he continues to be such constable, or within six calendar months after he has ceased to be such constable, be capable of giving his vote for the election of any person to any municipal office in such borough, ~~or for the election of a member to serve in Parliament for such borough or any county in or to which such borough is situate, either wholly or in part, or adjoins, or for any borough within any such county~~, nor shall any such constable, by word, message, writing, or in any other manner, endeavour to persuade any elector to give or dissuade any elector from giving his vote for the choice of any person to hold any municipal office in such borough, or to be a member to serve in Parliament for any such borough or county; and if any such constable shall offend therein he shall forfeit the sum of ten pounds, to be recovered in any court of competent jurisdiction, by any person who shall sue for the same within six months after the commission of the offence, and one half of the sum recovered shall be paid to the person suing for the same, and the other half to the treasurer of the borough: provided always, that nothing herein contained shall subject any con-

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stable to any penalty for any act done by him at or concerning any of the said elections in the discharge of his duty.

See sect. 191 of the Municipal Corporations Act, 1882, and the notes thereon.

* * * * *

Power to Her Majesty to appoint inspectors for inquiring into state and efficiency of the police in counties and boroughs, &c.

15. It shall be lawful for Her Majesty, by warrant under Her Royal Sign Manual, to appoint during Her Majesty's pleasure three persons as inspectors under this Act, to visit and inquire into the state and the efficiency of the police appointed for every county and borough, and whether the provisions of the Acts under which such police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge rooms, cells, or lock-ups, or other premises occupied for the use of such police; and each of the inspectors so appointed shall report generally upon such matters to one of Her Majesty's principal Secretaries of State, who shall cause such reports to be laid before Parliament; and such inspectors shall be paid out of such money as may be provided by Parliament for the purpose, such salaries and allowances as shall be determined by the Commissioners of Her Majesty's Treasury.

On certificate of Secretary of State that an efficient police has been established in any county or borough, one-fourth the charge for pay and clothing to be paid by the Treasury;

16. Upon the certificate of one of Her Majesty's principal Secretaries of State, that the police of any county or borough established under the provisions of the said Acts and this Act, or any of them, has been maintained in a state of efficiency in point of numbers and discipline for the year ending on the twenty-ninth of September then last past, it shall be lawful for the Commissioners of Her Majesty's Treasury to pay from time to time, out of the moneys provided by Parliament for the purpose, such sum towards the expenses of such police for the year mentioned in such certificate as shall not exceed one-fourth of the charge for their pay and clothing, but such payment shall not extend to any additional constables appointed under the nineteenth section of the said Act of the third and fourth years of Her Majesty; provided that before any such certificate shall be finally withheld in respect of the police of any county or borough, the report of the inspector relating to the police of such county or borough shall be sent to the justices of such county, or to the watch committee of such borough, who may

address any statement relating thereto to the Secretary of State; and in every case in which such certificate is withheld, a statement of the grounds on which the Secretary of State has withheld such certificate, together with any such statement of the justices or watch committee as aforesaid, shall be laid before Parliament.

The amount now paid by the Treasury is *one-half*, and not one-fourth, as mentioned in this section. The limit imposed by this section was repealed by 38 & 39 Vict. c. 48, s. 2. An absolute discretion is now vested in the Commissioners of the Treasury to pay such amount as they deem to be expedient. It will be noticed that the certificate of the Secretary of State, that the police have been maintained in a state of efficiency, is a condition precedent to any grant.

17. No such sum as aforesaid shall be paid towards the pay and clothing of the police of any borough, not being consolidated with the police of a county under the said Act of the third and fourth years of Her Majesty, or this Act, the population of which borough according to the last parliamentary enumeration for the time being does not exceed five thousand.

but not to any borough where population does not exceed 5,000 and not consolidated with police of a county.

By sect. 215 of the Municipal Corporations Act, 1882, a separate police force cannot be newly established in a borough with less than twenty thousand inhabitants. In such a case the borough and county police must be consolidated.

* * * * *

20. No agreement made under section fourteen of the said Act of the third and fourth years of Her Majesty, shall be put an end to without the sanction of one of Her Majesty's principal Secretaries of State.

As to agreements under sect. 14 of 3 & 4 Vict. c. 88.

* * * * *

23. For facilitating the purchase of lands and tenements for the purposes mentioned in section twelve of the said Act of the third and fourth years of Her Majesty, the provisions of "The Lands Clauses Consolidation Act, 1845," except the provisions with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with the said Act of the third and fourth year of Her Majesty and this Act; and the expression "the promoters of the undertaking," in the said Lands Clauses Consolidation Act, shall for the purposes of such incorporation mean the justices of the peace of any county in general

Provisions of 8 & 9 Vict. c. 18, for purpose of purchases of station houses, &c., by justices, incorporated with this Act.

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or quarter sessions assembled; and the powers of providing station houses and strong rooms contained in sections twelve and thirteen of the said Act of the third and fourth years of Her Majesty and this Act shall extend to authorize the providing of such station houses and strong rooms within any borough lying within or adjoining to the county for which the same may be provided.

The 12th and 13th sections of the 3 & 4 Vict. c. 88, are as follow:

12. And be it enacted, that it shall be lawful for the justices in general or quarter session assembled of any county in which or in any part of which constables shall be appointed under the first-recited Act, if they think fit, to order that station houses and strong rooms, or either of them, for the temporary confinement of persons taken into custody by the constables, be provided in such places as the said justices shall think fit, and upon such plan as shall be approved by one of Her Majesty's principal Secretaries of State, and for that purpose to purchase and hold lands and tenements, or to appropriate to that purpose any lands or tenements belonging to the county, which are not needed for the purpose to which they were applied or intended to be applied before such appropriation; and the expense of building, hiring, or otherwise providing, repairing, and furnishing such station houses and strong rooms, shall be defrayed out of the police rates.

13. And be it enacted, that it shall be lawful for the justices in general or quarter session assembled to borrow money for the purpose of purchasing any such lands and tenements, or of building any such station houses and strong rooms, and to charge the future police rates with the amount of the loan, and with interest thereon: provided always, that any money borrowed for such purpose shall be repaid by yearly instalments, not less than one twentieth part of the sum borrowed, with interest on the same, in any one year.

* * * * *

Interpretation of certain terms.

30. The word "county" shall in this Act have the same meaning as is assigned to such word in the said Act of the third and fourth years of Her Majesty, except as to the soke or liberty of Peterborough, in the county of Northampton, which for all purposes of this and the several recited Acts shall be deemed and taken to be a county of itself; and the several provisions in this Act and the said recited Acts shall apply and operate in, for, and concerning the said soke or liberty accordingly; and the word "borough" shall mean any city, borough, or place incorporated under the provisions of the said Act of the fifth and sixth years of King William the Fourth, or which has otherwise become subject to the provisions of the same Act; and every part of the cinque ports, two ancient towns of Winchelsea and Rye, and their several members and liberties, which is not within the municipal boundaries of a place named in one of the Schedules (A.) and (B.) to the last-mentioned Act,

shall for the purposes of the said Acts of Her Majesty and this Act be deemed to form part of the county in which the same is situate, and shall be dealt with, under the said Acts of Her Majesty and this Act, as a liberty which, under the said Acts of Her Majesty, forms part of a county, notwithstanding it may be a member or liberty of a place named in one of the said schedules.

2 & 3 Vict. c. 93, and 3 & 4 Vict. c. 88, and this Act to be as one.

31. The said Acts of the second and third and of the third and fourth years of Her Majesty and this Act shall be construed together as one Act.

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22 & 23 VICT. CAP. 32.

An Act to amend the Law concerning the Police in Counties and Boroughs in England and Wales.

[13th August, 1859.]

* * * * *

County constables not to be required to act in any borough, &c.

2. No county constable shall, as such constable, be required to act in any borough having a separate police establishment, except in execution of warrants of justices of such county, or by the order of his chief constable or superintendent; and in all cases of special emergency the chief constable or superintendent, when required so to do by the watch committee of any borough having a separate police establishment, shall have power to direct the county constables to act within such borough; and no constable of any borough having a separate police establishment shall as such constable be required to act out of his borough, except in execution of warrants of justices of such borough, or in pursuance of directions from the watch committee in case of special emergency.

County constables not to vote in certain municipal elections, &c.

3. No chief or other constable already appointed or hereafter to be appointed for any county, under the Act of the session holden in the second and third years of Her Majesty, chapter ninety-three, or the said Act of the third and fourth years of Her Majesty, or the said Act of the nineteenth and twentieth years of Her Majesty, shall during the time he continues to be such constable be capable of giving his vote for the election of any person to any municipal office in any borough within such

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county, or in any other borough in which such constable has authority; nor shall any such constable, by word, message, writing, or in other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of any person to hold any municipal office in such borough; and if any such constable shall offend therein, he shall forfeit the sum of ten pounds, to be recovered in any court of competent jurisdiction, by any person who shall sue for the same within six months after the commission of the offence; and one-half of the sum recovered shall be paid to the person suing for the same, and the other half to the treasurer of the county, to be by him applied for the purposes of the police of the county.

Sect. 4 provides for the case of a constable appointed under 2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; or 19 & 20 Vict. c. 69, resigning or withdrawing without notice or leave.

* * * * *

Chief constable and watch committee empowered to suspend constables.

26. The chief constable of any county police force, and the watch committee of any city, borough, district, or place, is and are hereby empowered to suspend any constable, within their respective jurisdiction, whom he or they shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same; and the said chief constable or watch committee is and are hereby also empowered, at his or their discretion, to fine any such constable in a sum of money not exceeding one week's pay, and to reduce the said constable from a superior to an inferior rank, such fine and reduction in rank to be in addition to any other punishment to which the said constable may be liable.

The portion of this section omitted was repealed by the Stat. Law Rev. Act, 1875.

Similar provisions are contained in sect. 191 (4) of the Municipal Corporations Act, 1882.

POLICE SUPERANNUATION AND GRATUITIES.

22 & 23 VICT. CAP. 32.

An Act to amend the law concerning the Police in Counties and Boroughs in England and Wales. [13th August, 1859.]

Those clauses of this Act are here given which relate only to the superannuation of the police, or granting them gratuities. The other important sections will be found *ante*.

Sect. 8. Superannuation fund to be provided for constables.

8. There shall be deducted from the pay of every constable belonging to the police force established in any borough under the Act of the Session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, a sum after such yearly rate as the council of the borough may direct, not exceeding the rate of two pounds ten shillings in a hundred pounds for a year, which sum so deducted, and also the moneys accruing from stoppages from any of the said constables during sickness, and fines imposed on any of the said constables for misconduct, and from any portion of the fines imposed by any justice of the peace upon drunken persons, or for assaults upon police constables, and from moieties of fines and penalties awarded to informers (being police constables) on summary convictions as shall be directed by such justice to be paid for the benefit of this fund, and all moneys arising from the sale of worn or cast clothing supplied for the use of the said constables, shall from time to time be invested in such manner as the council may direct, and the interest and the dividend thereof, or so much of the same as shall not be required for the purposes hereinafter mentioned, shall be likewise invested in the like manner, and accumulate so as to form a superannuation fund, and shall be applied from time to time for payment of such superannuation or retiring allowances or gratuities as may be ordered by the watch committee, as hereinafter provided; and the council shall guarantee the security of the superannuation fund of their borough, and make good out of the borough fund or the borough rates any deficiency which may arise in such superannuation fund from the default of any treasurer or other person intrusted with the custody or management thereof.

The 5 & 6 Will 4, c. 76, has been repealed by the Municipal Corporations Act, 1882, and the provisions of that statute are substituted for the repealed enactments (45 & 46 Vict c. 50, s. 242).

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Rates of allowance from the said fund.

9. It shall be lawful for the watch committee of any borough, with the approbation of the council, to order that any of the said constables who may be worn out or otherwise disabled from infirmity of mind or body be superannuated, and receive thereupon, out of the superannuation fund, a yearly allowance, subject to the following conditions, and not exceeding the following proportions (that is to say), if the constable has served with diligence and fidelity for fifteen years and less than twenty years, an annual sum not more than half his pay; if for twenty years or upwards, an annual sum not more than two-thirds of his pay; provided that if he be under sixty years of age it shall not be lawful to grant any such allowance unless upon the certificate of the chief or head constable that the constable to be superannuated is incapable from infirmity of mind or body to discharge the duties of his office; provided also, that if any constable be disabled by any wound or injury received in the actual execution of the duty of his office, it shall be lawful to grant him any allowance not more than the whole of his pay; but nothing herein contained shall be construed to entitle any constable absolutely to any superannuation allowance, or to prevent his being dismissed without superannuation allowance.

This section has been amended by sect. 3 of 28 & 29 Vict. c. 35, *post.*

Power to grant gratuities to incapacitated constables who have not served fifteen years.

10. It shall be lawful for the watch committee of any borough, if they think fit, with the approbation of the council, and upon the recommendation of the chief or head constable, and upon his certifying that any constable belonging to the police force of the borough who has not served so long as fifteen years is incapable from infirmity of mind or body to discharge the duties of his office, to order that such constable shall receive out of the superannuation fund such sum in gross as a gratuity upon his retirement as to the said watch committee may seem proper.

This section has been amended by sect. 3 of 28 & 29 Vict. c. 35, *post.*

Fees received by constables of a borough to be paid to the superannuation fund.

11. Any fee payable to any constable appointed for any borough, for the performance of any act done in the execution of his duty as such constable, shall be received in such manner as the watch committee, subject to the approbation of the council, may direct, and shall be paid over to the superannuation fund.

* * * * *

13. The superannuation fund created under this Act in any borough shall vest in the treasurer of the borough, and such treasurer shall keep a separate account of all sums of money by him received and paid in respect of such superannuation fund or for superannuations, and of the several matters for which such sums have been received and paid, and all provisions concerning the keeping, auditing, and publishing, and otherwise in relation to the accounts kept by such treasurer, under the said Act of the fifth and sixth years of King William the Fourth, shall be applied to the accounts kept under this enactment.

Superannuation fund to vest in borough treasurer.

* * * * *

15. Allowances heretofore granted to constables, or which might have been granted to constables appointed previous to the passing of this Act, under the said Act of the eleventh and twelfth years of Her Majesty, shall be paid from the superannuation fund to be applicable under this Act; and all constables now appointed in any borough in which the provisions of the said last-mentioned Act are now in force shall be entitled to receive from the superannuation fund all such allowances, payable at such times, and with and under the same rights and conditions, as they would have been entitled to if this Act had not passed.

Provision for payment of allowances heretofore granted. Rights, &c., under the repealed Act reserved.

The 11 & 12 Vict. c. 14 authorized the establishment of a borough police superannuation fund. It was repealed by sect. 7 of 22 & 23 Vict. c. 32.

16. The periods of service during which constables have been subjected to deductions from their pay towards a superannuation fund under the said Act of the eleventh and twelfth years of Her Majesty shall, in determining what superannuation allowances may be granted to them, be reckoned and allowed to such constables, and in the case of constables permanently appointed in any borough for which no superannuation fund has been provided, and from whose pay no such deduction has been paid, one half only of the respective periods of service of such constables before the passing of this Act shall be reckoned or allowed to such constables in determining what superannuation allowances may be granted under this Act.

How past services of existing constables to be reckoned for superannuation allowance.

17. On the consolidation of the police of any borough with the police of any county, under the provisions of the Act of the session holden in the third and fourth years of Her Majesty,

Provision for the case of consolidation

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Sect. 17. of county and borough police.

chapter eighty-eight, the superannuation allowance previously granted to any borough constable shall be charged on the borough fund or the borough rates of the borough, and the superannuation allowance to be thereafter granted to any borough constable tranferred under such consolidation shall be charged upon the superannuation fund of the county; and in determining the amount of any such allowance the period of service of any such constable in the borough shall be reckoned as if the same had been in the county police; and this charge, and the disposal of the borough superannuation fund, shall form a part of the agreement to be entered into on the consolidation.

The 18th section empowers county justices to direct the police to keep order in assize courts.

On promotion of constables from one force to another, half of past service may be reckoned as service in the latter force.

19. In order to provide the most meritorious and fit men to fill the superior ranks in the police, any constable or officer promoted from one force to another, either of a county or a borough, who shall have served in his last force for a period of seven years, shall, for the purposes of superannuation, reckon as service in the force to which he is promoted one half of the period of his previous service, provided that the promotion be made, in the case of a county constable, on the recommendation of the chief constable, with the sanction of the court of quarter sessions, and in the case of a borough constable on the recomdation of the head constable of the borough, with the sanction of the council, and that in both cases the service be formally certified at the time of promotion.

General or quarter sessions of counties, &c., may grant gratuities to widows of constables dying in service.

20. The court of general or quarter sessions for any county, and the watch committee, subject to the approbation of the council for any borough, may, upon the recommendation of the chief or head constable, grant a gratuity out of the superannuation fund of their county or borough to the widow of any constable who has died in the service, provided the sum so granted do not exceed the amount of one year's pay of such constable, and that he have contributed to the superannuation fund for a period of not less than three years.

As to places with superannuation funds under local Acts.

21. None of the provisions of this Act relating to a police superannuation fund, or contributions thereto or payments thereout, shall apply to any county, city, or borough in which a

police superannuation fund has at the time of the passing of this Act been established under the provisions of any local Act now force. Appendix. Sect. 21.

* * * * *

24. The court of general or quarter sessions for any county, and the watch committee, subject to the approbation of the council for any borough, may, upon the recommendation of the chief constable of any county police force, or of the superintendent of the police for the said borough, grant to any constable in the said county or borough, out of the police rate or borough fund, a gratuity in money not exceeding three pounds, in respect of and as a reward for any meritorious act done by the said constable in the execution of his duty. Gratuities may be granted as reward for good service to police out of police rates, &c.

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28 & 29 VICT. CAP. 35.

An Act to amend the Law relating to the Police Superannuation Funds in Counties and Boroughs.

[2nd June, 1865.]

1. This Act may be cited for all purposes as The Police Superannuation Act, 1865. Short title.

2. Throughout this Act the Acts hereinafter mentioned shall be distinguished by the following short titles; that is to say, Short titles of certain Police Acts.

The Act of the session of the third and fourth years of the reign of Her present Majesty, chapter eighty-eight, intituled An Act to amend the Act for the Establishment of County and District Constables, by the short title of The Police Act, 1840: 3 & 4 Vict. c. 88.

The Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter sixty-nine, intituled An Act to render more effectual the Police in Counties and Boroughs in England and Wales, by the short title of The Police Act, 1856: 19 & 20 Vict. c. 69.

The Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter thirty-two, intituled An Act to amend the Law concerning the Police in Counties and Boroughs in England and Wales, by the short title of The Police Act, 1859. 22 & 23 Vict. c. 32.

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Sect. 3. Amendment of sect. 11 of 3 & 4 Vict. c. 88, sect. 10 of 19 & 20 Vict. c. 69, and sects. 9 and 10 of 22 & 23 Vict. c. 32.

3. Whereas by The Police Act, 1840, and The Police Act, 1856, the justices of the county in general or quarter sessions assembled, and by The Police Act, 1859, the watch committee of a borough, with the approbation of the council, are authorized, subject to the conditions and in the events in the said Acts respectively mentioned, to grant out of the police superannuation funds to constables of the police forces of counties and boroughs who have served fifteen years superannuation or retiring allowances, and to constables who may not have served fifteen years sums in gross as gratuities: And whereas it is expedient that in some cases annual allowances for a limited time should be granted in lieu of allowances for life or gratuities: Be it enacted, that where the said Acts authorize a grant to be made to a constable of a superannuation or retiring allowance or a gratuity, the authority having power to grant such allowance or gratuity may, in lieu thereof, grant an annual allowance for a limited time, to be fixed by such authority, and to be determined on the death of the annuitant before the expiration of the time fixed: provided that where an allowance for a limited time is granted to a constable who has served for fifteen years or more, it shall be granted on the same scale as if it were a permanent superannuation or retiring allowance, and if at the expiration of the limited time, the annuitant is incapable from infirmity of mind or body of discharging the duties of a constable, or has attained the age of sixty years, the allowance granted to him for a limited time only shall be continued during the remainder of his life; provided also, that where a person to whom an annual allowance for a limited time has been granted under this section is reappointed to the office of constable, the time during which he was in receipt of such allowance shall, for the purposes of any subsequent superannuation allowance, be reckoned as service in the force.

Head constable included in provisions of 22 & 23 Vict. c. 32.

4. Whereas doubts are entertained whether the provisions of The Police Act, 1859, relating to a superannuation fund for constables belonging to a police force in boroughs, apply to a chief or head constable of the police force in such boroughs, by reason, amongst other things, that the said Act requires in certain cases the certificate or recommendation of the chief or head constable before an allowance can be made or a gratuity given out of the said fund to a constable or his widow: And whereas it is expedient to remove the said doubts: Be it enacted, that the chief or head constable of the police force established in any

borough in which the superannuation fund is subject to the regulations of the Police Act, 1859, shall, from and after the date of the passing of this Act, be deemed to be a constable of the said police force for all purposes relating to and within the meaning of this Act and all other Acts regulating such superannuation fund; provided, first, that in the case of the said chief or head constable, or his widow, a resolution of the watch committee to the effect of the certificate or recommendation required to be given by the chief or head constable under The Police Act, 1859, shall be deemed to be equivalent to such certificate or recommendation; secondly, that the period of service during which any chief or head constable, either as such or as an inferior member of the force, may have been subjected to deductions from his pay towards such borough police superannuation fund as aforesaid shall, in determining what allowance or gratuity is to be made to him, be reckoned and allowed to such chief or head constable; thirdly, that one-half only of the period of service (if any) during which such chief or head constable, either as such or as an inferior member of the force, has been subjected to no such deductions as aforesaid from his pay towards such superannuation fund as aforesaid shall be reckoned and allowed to such chief or head constable in determining what allowance or gratuity is to be made to him; fourthly, that where such chief or head constable has been promoted from another police force whether county or borough, to the borough force out of the fund of which he claims superannuation, in such a case, if he has served not less than seven years either as chief, head, or other constable in such other force, his service in such other force to the extent of one-half thereof shall be deemed, for the purposes of superannuation, to be service in the latter force, and be reckoned accordingly, subject to the conditions on which service in the latter force may be reckoned under this section; and subject also to the qualification that if at the time when he was promoted from the other force he was under the rank of chief or head constable, no part of his service in such other force shall be reckoned unless his promotion took place on the recommendation of the chief or head constable of the force from which he was promoted.

Nothing to prevent dismissals with-

5. Nothing in this Act contained shall be construed to entitle absolutely any chief or head constable or other constable, or his widow, to any superannuation or retiring allowance or gratuity,

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Sect. 5. out retiring allowances.

or to prevent any such constable being dismissed without such allowance or gratuity: provided also, that nothing in this Act contained shall diminish or prejudice the allowances or rights of any chief or head constable or other constable given or reserved by the fifteenth section of The Police Act, 1859.

Proviso.

BOROUGH AND LOCAL COURTS OF RECORD ACT, 1872.

35 & 36 VICT. CAP. 86.

An Act to amend the Law relating to Borough and other Local Courts of Record.

[10th August, 1872.]

The 184th section of the Municipal Corporations Act, 1882, provides that nothing in that Act shall affect the Borough and Local Courts of Record Act, 1872.

WHEREAS it is expedient to amend the law relating to borough and other local courts of record in England or Wales: be it therefore enacted, &c.:

Short title.

1. This Act may be cited as "The Borough and Local Courts of Record Act, 1872."

Her Majesty may direct certain enactments to extend to any local court of record.

2. It shall be lawful for Her Majesty from time to time by an order in council to direct that all or any part of the provisions of an Act passed in the first and second years of His late Majesty King William the Fourth, intituled "An Act to enable the Courts of Law to give relief against adverse claims made upon persons having no interest in the subject of such claims," and of the provisions set forth in the schedule to this Act, shall apply to all or any local court or courts of record in England or Wales; and within one month after such order shall have been made and published in the *London Gazette*, such provisions shall extend and apply in manner directed by such order, and any such order may be in like manner from time to time altered and annulled; and in and by such order Her Majesty may alter and modify

such provisions as are mentioned in the schedule, so as to adapt the same to the constitution, jurisdiction, and procedure of any such court or courts, and may direct by whom and at what time or times any powers and duties incident to the provisions applied under this Act shall and may be exercised with respect to matters in such court or courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied.

Her Majesty may direct that writ, &c., may be served as specified.

3. It shall also be lawful for Her Majesty from time to time by such order as aforesaid to direct that any writ, order, summons, or process issuing out of or made or taken in any such court of record may be served in such part or parts of England and Wales as shall be specified in such order.

Two or more courts may be held at the same time.

4. Two or more courts may be held at the same time, either for the trial of issues or for the ordinary proceedings of the court.

Affidavits made before any commissioner, &c.

5. Affidavits made before any commissioner or other person appointed or authorized to take affidavits, either in England or elsewhere, by the Lord High Chancellor, or by any of the superior courts, or by the judges thereof, may be used in the court, and the signature of any person purporting to be such commissioner, or to be a person so appointed or authorized as aforesaid, need not be verified.

Power to send writs of execution to bailiffs of county court.

6. In all cases where final judgment shall have been obtained in any action brought in the court wherein the debt or damage does not exceed twenty pounds, exclusive of costs, and also in all cases where any rule or order shall be made by the judge for the payment of any sum of money, or any costs, charges, or expenses, not exceeding the sum of twenty pounds, such court shall be at liberty to send a writ or precept for the recovery of the same to the registrar of any county court within the jurisdiction of which the defendant may possess any goods or chattels; and the registrar of such county court shall stamp or seal the same, and thereupon the high bailiff of such county court shall execute the same in the same manner as if such writ or precept had been issued out of such county court, and such high bailiff shall take all the usual and proper fees thereupon, and shall

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make a return of what he shall have done thereunder to the bailiff or serjeant-at-mace of the court; and in all matters done under such writ or precept, or in relation thereto, such high bailiff shall be under the direction and control of the judge of the county court of which he is high bailiff, as if such writ or precept had issued out of such county court: provided always, that the costs of more than one writ, precept, or warrant shall not be allowed against the execution debtor, unless by order of the judge of the said court.

Judge may appoint a deputy.

7. A judge of any court may appoint a deputy or assistant judge to execute any particular portion or duty of such judge, such appointment being under such orders, rules, and regulations as Her Majesty by order in Council may direct, provided such deputy shall be a barrister of not less than seven years standing.

Proviso as to City of London Court.

8. Provided always, that in the City of London Court the same fees shall always be taken as are for the time being taken in the county courts: provided also, that the provisions in sect. 12 of the schedule shall not be applied to the City of London Court, or to the Court of Record for the hundred of Salford.

THE MUNICIPAL CORPORATIONS (BOROUGH) FUNDS ACT, 1872.

35 & 36 VICT. Cap. 91.

An Act to authorize the application of Funds of Municipal Corporations and other governing bodies in certain cases.

[10th August, 1872.]

20 & 21 Vict. c. 50.

Whereas by the Act passed in the session holden in the twentieth and twenty-first years of the reign of Her Majesty, intituled An Act to amend the Acts concerning the Municipal Corporations, the trustees acting under any Act of Parliament for supplying any borough, or any district within or in certain cases beyond the limits of a borough, with water or gas, or

having powers for providing or maintaining any cemetery or market in or for any borough, or otherwise improving the same, are authorized and empowered to transfer to the body corporate of such borough all their rights, estates, properties, and liabilities:

And whereas by the ninety-second section of the Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, to provide for the regulation of Municipal Corporations in England and Wales, in each borough the annual proceeds of all property and hereditaments belonging to the body corporate, and fines and rates levied in the borough, are directed to form the borough fund, and such fund is directed to be applied in the payment of certain salaries and certain expenses and the expenses necessarily incurred in carrying into effect the provisions of the said Act, and the surplus (if any) of such fund is directed to be applied, under the direction of the council, for the public benefit of the inhabitants and the improvement of the borough:

And whereas the Public Health Act, 1848, the Local Government Act, 1858, and various local Acts of Parliament, have conferred powers of improving, cleansing, paving, lighting, and otherwise governing places or districts upon boards of health, commissioners, trustees, or other persons:

And whereas it is expedient to extend the powers of governing bodies so as to enable them to apply the borough or other funds under the control of such governing body towards such costs, charges, and expenses as may be incurred for the purposes and in the manner herein provided:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The 20 & 21 Vict. c. 50 is repealed by the Municipal Corporations Act, 1882, First Sched. Part I. The substituted provisions will be found in the 136th section of the last-named Act.

The 5 & 6 Will. 4, c. 76, is repealed by the Municipal Corporations Act, 1882, First Sched. Part I. The substituted provisions will be found in sects. 139 and 140 of that Act.

The Public Health Act, 1848, and the Local Government Act, 1858, are repealed by the Public Health Act, 1875 (38 & 39 Vict. c. 55). The substitution of the provisions of that Act for the repealed Acts is effected by sect. 313.

Where a town council has a surplus of the borough fund under sect. 143 of the Municipal Corporations Act, 1882, or where the council have under their control funds applicable, in their discretion, for the public benefit of the

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inhabitants, Parliament has allowed them to promote bills without complying with the requirements of this Act; and the costs have been directed to be paid out of any fund under the control of the council not derived from rates.

It is in the power of Parliament to dispense with a compliance of the requirements of this Act, and to allow a bill to proceed providing for the payment of the costs in the usual way. It is assumed that where the difficulties of complying with the Act would be almost insurmountable, Parliament would take this course.

Interpretation of terms.

1. The term "governing body" in this Act shall mean the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, and the term "district" shall mean the borough, place, township, or district within which the governing body may for the time being have jurisdiction: provided, however, that in the borough of Cambridge, in any matters affecting the constitution, power, or functions of the Board of Cambridge Improvement Commissioners, as defined in the several Acts of Parliament relating thereto, the term "governing body" shall mean such board of improvement commissioners, and not the council of the borough of Cambridge.

Costs of promoting or opposing parliamentary and other proceedings for benefit of inhabitants to be charged on borough and local funds, except in certain cases.

2. When in the judgment of a governing body in any district it is expedient for such governing body to promote or oppose any local and personal bill or bills in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or rates under the control of such governing body to the payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions: provided that nothing in this Act contained shall authorize any governing body to promote any bill in Parliament for the establishment of any gas or water works to compete with any existing gas or water company established under any Act of Parliament: provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a bill by a governing body has been decided by a com-

mittee of either House of Parliament to be unreasonable or vexatious.

See the case of *R.* v. *Mayor of Sheffield* referred to in the Preface.

No payment to member of governing body to be so charged.

3. No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such bill shall be charged as aforesaid.

It seems that this provision is needless. (*See* sect. 12 of the Municipal Corporations Act, 1882.)

Costs of promoting or opposing bills to require sanction of special meetings.

4. No expense in relation to promoting or opposing any bill or bills in parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval of such board, and in respect of other matters, the approval of one of Her Majesty's Secretaries of State, and in case of the promotion of a bill in Parliament no further expense shall be incurred or charged as aforesaid after the deposit of the bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not less than fourteen days after the deposit of the bill in Parliament: provided further, that no expense in promoting or opposing any bill in Parliament shall be charged as aforesaid unless such promotion or opposition shall have had the consent of the owners and ratepayers of that district, to be expressed by resolution in the manner provided in the Local Government Act (1858) for the adoption of that Act.

By a local Act it was provided that certain works should not be constructed without the previous consent of a majority of not less than two-thirds of the council in writing under their common seal. In a council consisting of sixteen members, at a meeting duly held, there were fifteen members present; ten voted for the works. *Held*, that the term majority meant a majority present at a duly convened meeting, and that the resolution was therefore duly passed. (*The Mayor of Dartmouth* v. *The Dartmouth Harbour Commissioners*, decided Chancery Division, by CHITTY, J., February 13th, 1883, and confirmed on appeal by COTTON and LINDLEY, JJ., March 20th, 1883.)

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Note s. 4.

See the Municipal Corporations Act, 1882, s. 22, and sch. II. r. 10. *See* also Rawlinson's Municipal Corporations Acts, 7th edition, pp. 43 and 44.

The Local Government Act (1858) is repealed as mentioned in note to preamble. The provisions of the Public Health Act, 1875, are substituted for the provisions of the repealed Act by sect. 313 of the Public Health Act, 1875.

Proviso as to approval of Local Government Board, &c., to any such resolution.

5. The approval of the Local Government Board or one of Her Majesty's principal Secretaries of State, as the case may be, shall not be given to any such resolution as aforesaid until the expiration of seven days after the second publication thereof, as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board or Secretary of State objecting to such approval.

The Local Government Board requires a statutory declaration that all the preliminary steps have been taken.

Where a poll had been improperly refused, and an application was made to the Queen's Bench for a *mandamus* to a mayor to take a poll, the court refused the *mandamus* as the applicant did not show a real interest in the matter. (*R.* v. *Mayor of Peterborough*, 44 L. J. Q. B. 85.)

See *In re the Birmingham Town Council* (*Times*, March 21st, 1882), as to the method of conducting a poll under a local Act, and the right of ratepayers to a scrutiny against the decision and discretion of the presiding officer.

Costs to be examined.

6. All costs, charges, and expenses incurred under the provisions of this Act shall, before the same become chargeable, be examined and allowed by some person to be authorized by one of Her Majesty's principal Secretaries of State or by the Local Government Board, as the case may be.

Power to direct local inquiry.

7. The Local Government Board, or one of Her Majesty's principal Secretaries of State, shall have power to direct a local inquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local inquiry upon the governing body or the person by whom such application shall be made.

Saving clause.

8. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exerciseable by the inhabitants of any district under any general or special Act.

This section saves the right of a corporation to oppose a bill in Parliament attacking their existence as a corporation, or attempting to take away their rights, powers, and privileges. (*Attorney General* v. *Brecon*, L. R. 10 Ch. D. 204; 40 L. T. (N.S.) 52. *Bower* v. *Sligo* (*Commissioners*) 4 Ir. R. C. L. 489).

Towns Improvement Clauses Act, 1847, s. 142, repealed.

9. The one hundred and forty-second section of "The Towns Improvement Clauses Act, 1847," is hereby repealed so far as the same is inconsistent with the provisions of this Act.

Act not to extend to bills if object attainable by provisional order.

10. The provisions of this Act shall not extend to applications for any bill in Parliament for any object which would, for the time being, be attainable by provisional order.

Act not to apply to Ireland or the metropolis.

11. This Act shall not extend or apply to Ireland or the city of London or the metropolitan area as defined by the Metropolitan Local Management Act, 1855.

A standing order (173*a*) of the House of Commons provides as follows:—

In the case of any bill promoted by or conferring powers on a municipal corporation or local board, improvement commissioners, town commissioners, or other local authority or public body having powers of local government or rating, the committee on the bill shall consider the clauses of the bill with reference to the following matters:

(*a*.) Whether the bill gives powers relating to police or sanitary regulations in conflict with, deviation from, or excess of, the provisions of powers of the general law;

(*b*.) Whether the bill gives powers which may be obtained by means of bye-laws made subject to the restrictions of general Acts already existing;

(*c*.) Whether the bill assigns a period for repayment of any loan under the bill exceeding the term of sixty years, which term the committee shall not in any case allow to be exceeded, or any period disproportionate to the duration of the works to be executed or other objects of the loan;

(*d*.) Whether the bill gives borrowing powers for purposes for which such powers already exist or may be obtained under general Acts, without subjecting the exercise of the powers under the bill to approval from time to time by the proper Government department.

And the committee shall report specially to the House—

In what manner any clauses relating to the several matters aforesaid have been dealt with by the committee; and

Whether any report from any Government department relative to the bill has been referred to the committee; and

If so, in what manner the recommendations in that report have been dealt with by the committee; and

Any other circumstances of which, in the opinion of the committee, it is desirable that the House should be informed:

And the report of the committee shall be printed, and shall be circulated with the votes.

The Acts under which costs on private bills are taxed are the 10 & 11 Vict. c. 69; the 12 & 13 Vict. c. 78; and the 28 Vict c. 27.

The 30 & 31 Vict. c. 136, empowers the courts of referees to award costs in certain cases.

Appendix.

PUBLIC WORKS LOANS ACT, 1875.

38 & 39 VICT. CAP. 89.

This Act is referred to in sect. 120 of the Municipal Corporations Act, 1882. So much of the Act only is set forth as seems of practical importance to town councils.

Preliminary.

Short title.

1. This Act may be cited as the "Public Works Loans Act, 1875."

Sects. 2 and 3 relate to commencement of Act and Isle of Man.

Public Works Loan Commissioners.

Constitution, &c., of Public Works Loan Commissioners.

4. For the purpose of loans out of moneys issued in pursuance of this Act, and for the purpose of the execution of this Act, and of any enactment passed or hereafter to be passed authorizing or referring to such loans, there shall be a body of commissioners (in this Act referred to as the Loan Commissioners), who may be styled the Public Works Loan Commissioners. * * * *

Powers, &c., of commissioners.

5. With respect to the Loan Commissioners the following provisions shall have effect:

(1.) The Loan Commissioners may sue and be sued in the name of their secretary for the time being; and no action or suit in law or equity brought or commenced by or against the said commissioners in the name of their secretary for the time being shall abate or be discontinued by the death or removal of such secretary, or by the act of such secretary without the consent of the said commissioners; but the secretary to the said commissioners for the time being shall always be deemed the plaintiff or defendant in such action or suit, as the case may be; and

(2.) The commissioners may examine any persons willing to be examined on any matters connected with the execution of this Act, and may for that purpose, or otherwise for the purpose of the execution of this Act, administer an oath, and take any affidavits or declaration; and

(3.) The Loan Commissioners shall annually cause to be made out up to the end of every financial year a report of their transactions under this Act during the year, and such report shall contain or have annexed thereto the prescribed particulars respecting moneys issued to and loans granted by the commissioners either before or after the passing of this Act, and the execution of the duties of the Loan Commissioners, and such other particulars as the Loan Commissioners may from time to time think fit:

Such particulars shall include a statement of any difference that may have arisen between the Loan Commissioners and any public department respecting the grant of any loan or the construction of any Act relating to loans by the Loan Commissioners:

Such report shall be transmitted to the Treasury within two months after the date up to which it is required to be made, and shall be forthwith laid by the Treasury before both Houses of Parliament, if Parliament be then sitting, or if not, within one month after the then next sitting of Parliament; and

(4.) Any minute made of proceedings at meetings of the commissioners, if signed by any person purporting to be the chairman, either of the meeting of the commissioners at which such proceedings took place, or of the next ensuing meeting of the commissioners, shall be receivable in evidence in all legal proceedings without further proof, and until the contrary is proved, every meeting of the commissioners, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified to act; and

(5.) An act or proceeding of the commissioners shall not be questioned on account of any vacancy or vacancies in their body.

Sect. 6 enables the commissioners to appoint officers.

Appendix.

Sect. 7.

Securities given to and property vested in secretary to vest in his successor.

7. Where under this or any other Act, or any conveyance, obligation, or security, any real or personal property, or any estate or interest therein, or any chose in action, has been or may be vested in, conveyed, made payable, or secured to the secretary of the Loan Commissioners for the time being as such secretary, and in respect of his office, all such real and personal property, estate and interest, and chose in action whatsoever, upon the death, removal, or resignation of any such secretary from time to time, and as often as the same happens and the appointment of a successor takes place, shall (subject to the same trusts, and equities, if any, as the same were before respectively subject to) vest in such succeeding secretary, by force of this Act, and without any act or deed whatever to be done by the secretary dying, resigning, or removed, or by the heirs, executors, or administrators of such secretary, or by any person or persons claiming under him, them, or any of them, and notwithstanding the same may have been expressed to be vested in, conveyed, made payable to or secured to such secretary, his heirs, executors, administrators, and assigns, or any of them; and shall be proceeded upon in the name of any succeeding secretary, by any action or suit in law or equity, or in any other manner as the same might have been proceeded upon by or in the name or names of such secretary dying, resigning, or removed.

Where the secretary of the Loan Commissioners is a party to any action, suit, or other legal proceeding, such secretary acting under the direction of the commissioners shall be deemed to represent the Crown, so far as regards the interest of the Crown in any loan granted under this Act, or any money due under a security for any such loan, and it shall not be necessary to make the Crown, or any other person on behalf of the Crown, a party to such action, suit, or proceeding, in respect of such interest as aforesaid.

Execution of conveyances, leases, &c. by secretary on behalf of commissioners.

8. All conveyances, leases, mortgages, releases, arrangements, and things which the Loan Commissioners are authorized by this Act to grant, execute, make, or concur in, and all powers, acts, and things which the Loan Commissioners are authorized by this Act to exercise, do, or concur in, in relation to any mortgaged property or rate, may be granted, executed, made, concurred in, exercised, and done by their secretary for the time

being under their direction, and when so granted, executed, made, concurred in, exercised, and done by such secretary, shall be deemed to have been granted, executed, made, concurred in, exercised, and done by him under the direction of the commissioners, unless the contrary is shown by some person interested in contesting the validity thereof.

Any property, chose in action, estate, interest, powers, authorities, and privileges vested in or exerciseable by the secretary of the commissioners in pursuance of this Act shall be dealt with and exercised by him under the direction of the commissioners, and not otherwise.

Objects, Terms, and Duration of Loan.

Loans for public works.

9. The Loan Commissioners may, if they think it expedient, from time to time, in manner mentioned in this Act, make loans for the purpose of any of the works mentioned in the First Schedule to this Act, to any person having power under an Act of Parliament or otherwise, to borrow for such purpose.

The Loan Commissioners in considering the propriety of granting a loan shall have regard to the sufficiency of the security for its repayment, and, subject to the provisions of any special Act, shall determine whether the work for which the loan is asked would be such a benefit to the public as to justify a loan out of public money, having regard to the amount of money placed at their disposal by Parliament.

Interest on loan.

10. Every loan granted under this Act shall bear interest at a rate not less than the rate authorized by a special Act relating to such loan, or if no rate be so authorized, not less than five per cent. per annum; provided that when the aggregate amount of principal moneys due by any harbour authority to the commissioners under "The Harbours and Passing Tolls, &c., Act, 1861," exceeds one hundred thousand pounds, the rate of interest on such excess shall be three and a half per cent., or such higher rate, not exceeding five per cent., as may in the judgment of the Treasury be necessary to enable the loan to be made without loss to the Exchequer.

Term of years for repayment of loans.

11. Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within a period from the date of the actual advance of such loan,

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not exceeding the period authorized by a special Act relating to such loan, or if no period be so authorized, not exceeding twenty years.

Where a loan has been granted repayable within a period less than the full period allowed by the foregoing provisions of this section, the Loan Commissioners, if the repayment of the loan, with interest, is in their opinion sufficiently secured by such security as is required by this Act, and if they think fit, may extend the period for the repayment of such loan to a period not exceeding the said full period from the date of the advance of such loan.

Where no period is authorized by a special Act relating to the loan, the Treasury, on the recommendation of the Loan Commissioners, stating special circumstances, may either before or after the grant of the loan, extend the period within which the loan is to be repaid to such period as may be recommended by the Loan Commissioners.

The Loan Commissioners in considering whether the period for the repayment of a loan should or should not be the said full period, and the Loan Commissioners and the Treasury in considering whether the period should be extended as aforesaid, shall have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by such work.

The first instalment for the repayment of every loan shall be made payable within a period not exceeding five years from the date of the advance of such loan.

Security for loans.

12. The Loan Commissioners before advancing any money on account of a loan shall take security for the repayment of the loan with the interest, consisting of the security authorized by the special Act relating to the loan, and if none is so authorized, of a mortgage property, or of a rate, or of both property and a rate, and (save as hereinafter mentioned) of personal security.

The Loan Commissioners may, if they think fit, dispense with personal security in any case in which in their opinion the mortgaged property or rate is sufficient security for the payment of the principal and interest of the loan within the stipulated period.

Funds for Loans.

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Annual estimate of amounts required.

13. For the purpose of passing an annual Act of Parliament, granting money for the purpose of loans by the Loan Commissioners, every intending borrower shall send to the commissioners on or before the thirty-first day of December in every year a statement of the new loan or instalments of a loan already granted which the sender will probably apply to borrow during the ensuing financial year; and the commissioners shall, as soon as practicable, submit all such statements to the Treasury, with such observations thereon and information respecting the same as they may think expedient, and as may be necessary for enabling the Treasury to lay before the House of Commons an estimate of the amount required to be granted for the purpose of loans by the Loan Commissioners.

The Loan Commissioners shall not, except with the permission of the Treasury, grant any loan or advance any instalment of a loan which has not been included in such a statement as above mentioned.

The Treasury, if they think that after providing for the loans and instalments included in the said statements, or such of them as will actually be advanced, there will be a balance out of the sum granted by Parliament sufficient to meet any loan or instalment not included in the statements, may, if they think fit, grant such permission, and may grant it conditionally upon the said balance being in their opinion sufficient when the time for the actual payment arrives.

If the regulations under this Act require quarterly statements to be sent by borrowers of the amounts which will be required by such borrowers, the Treasury may, if they think fit, refuse to issue in any quarter of a financial year any larger sum than the total of the amounts named in the statements referring to such quarter.

Sect. 14 relates to the issue by the Treasury of money for the purposes of loans.

Sect. 15 enables the Treasury to borrow for the purpose of raising money for loans.

Sects. 16 and 17 relate to the issue of money to the National Debt Commissioners, and repayments.

Recovery of Loans.

Charge on property and priority of

18. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any property (whether with or without any other security), the property from and after the

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loan by the commissioners.

date of the mortgage shall be charged with the payment to the use of Her Majesty of the loan with interest as in the mortgage mentioned, in priority, save so far as otherwise specified in the mortgage, over every other debt, mortgage, or charge whatsoever affecting the property, except any loan due to any creditor not assenting to such priority which has been advanced in good faith before the loan advanced by the commissioners and secured by a mortgage of the property executed to a person who is entitled as a *bonâ fide* creditor to the repayment thereof with interest.

Provided that if there is more than one such creditor and not less than four fifths in value of such creditors consent in writing that the said charge shall have priority over the loans and mortgages of such creditors, in such case the loans and mortgages of all such creditors, as well those who have not agreed as those who have agreed, shall be postponed to the loan granted by the commissioners and to the said charge thereof, and to the security for the same.

Nothing in any special Act, and no rule of law or custom shall affect the priority given by this section, except so far as the special Act negative such priority in terms expressly referring to this Act.

Charges on rate of loan and loan not to be repudiated by locality having had the benefit of it.

19. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any rate (whether with or without any other security) such rate from and after the date of the mortgage shall be charged with the payment to the use of Her Majesty of the loan with interest as in the mortgage mentioned.

Where the loan has been granted to any borrower who appeared to the commissioners to have power to levy and mortgage such rate and has been expended upon the work in respect of which or in or for the benefit of the locality in which such rate or any part thereof is levied, the mortgage of the rate for securing the repayment of the loan with interest shall be valid, and may be enforced in pursuance of this Act, notwithstanding any defect in the power or title of the borrower by whom the mortgage purports to be granted; and in particular the commissioners may, although such borrower was not legally constituted or is dissolved, or is otherwise incapable and always was incapable of making, levying, or mortgaging such rate, have the same power of making and levying and enforcing the making or

levying the said rate for the purpose of repaying such loan and interest, and all other sums due under the mortgage, as if such borrower had been duly constituted, and was not dissolved, and had had full power to make, levy, and mortgage such rate.

Securities to be taken in name of secretary.

20. All securities for any loan granted by the Loan Commissioners in pursuance of this Act may be given to the secretary of the commissioners on their behalf. Every such security is in this Act referred to as a security given to the commissioners.

Taking possession by commissioners of property on default of payment.

21. Where a mortgage of property has been given to secure any loan granted by the Loan Commissioners, and default is made in making payment according to the terms of such mortgage, then at any time after such default and without any consent on the part of any person interested in the equity of redemption of the mortgaged property, the commissioners, without prejudice to any other remedy, shall have power to do all or any of the following things: namely,

(1.) Take possession of the mortgaged property, or any part thereof; and

(2.) Grant any lease of the mortgaged property, or any part thereof, for such term and upon such reasonable conditions as they may think expedient, and that either for a premium or rent, or both; and

(3.) Sell or mortgage the mortgaged property, or any part thereof.

Powers of commissioners when in possession.

22. The Loan Commissioners, when authorized to take possession of any mortgaged property, may take possession either by themselves or by any person appointed by them (whether such person is interested in the mortgaged property or not), and upon possession of any mortgaged property being so taken,—

(1.) All the estate, right, interest, powers, authorities, and privileges, of what nature or kind soever, which were at the time of the making of the mortgage or may for the time being be vested in or exercisable by the mortgagor or any person claiming through or under the mortgagor, either in relation to the property or necessary for carrying on and managing the same,

shall become vested in the secretary of the commissioners; and

(2.) The commissioners may by themselves or any person appointed as aforesaid manage and carry on the property, and receive the revenue arising therefrom, or in any way receivable in respect thereof, or otherwise, in pursuance of the mortgage, and exercise all or any of the powers and authorities vested in their secretary by this Act; and

(3.) The commissioners or their secretary or such person as aforesaid shall not be liable for the repairs or maintenance of the mortgaged property, but may apply any moneys received in respect thereof or raised from any rate towards such repairs or maintenance to such extent as the commissioners may think expedient; and

(4.) The commissioners may, with the consent of the Treasury, advance out of moneys at their disposal under this Act sums for the completion, repair, improvement, or security of the mortgaged property, and every such sum shall be deemed and shall be a loan secured on the property and repayable with the like interest from the time of the advance, and by the like person, and shall have the like priority and be recoverable in the like manner as if it were part of the original loan secured by the said mortgage; and

(5.) If the revenue received from or in respect of the property is insufficient to keep down the current expenses of working, maintaining, and repairing the same, together with the instalments of principal and the interest for the time being due on the mortgage, and no rate or no sufficient rate can be levied to meet the deficiency, the commissioners may, with the consent of the Treasury, destroy or cause to be destroyed, or (if they sell the same) authorize the purchaser with the like consent to destroy the same, and sell or authorize the purchaser to sell the materials thereof and other the articles, goods, and effects belonging thereto, and neither the commissioners, nor their secretary, nor the purchaser so authorized, nor his

representatives, shall be liable in damages or otherwise to any person whomsoever for such destruction; and the provisions of this Act with respect to the sale of any mortgaged property shall apply to any sale under this section; and

(6.) Possession under this Act may be relinquished at such time and in such manner and upon such terms and conditions as the commissioners think fit, and upon such relinquishment all powers, authorities, and privileges which on the taking of possession became vested in the secretary of the commissioners shall, so far as they are not reserved, revert to and become vested in the person in whom the same would have been vested if possession had not been taken, but the commissioners may, if they think fit, on the relinquishment of possession, reserve any of the said powers, authorities, and privileges, with a view to the payment of any sum due to them:

(7.) Every such relinquishment of possession of any mortgaged property shall be without prejudice to the power of again taking possession thereof under the provisions of this Act.

Powers in relation to rate where default made.

23. Where a loan made by the commissioners is secured by the mortgage of a rate (whether with or without any other security), and the commissioners might, if such loan were secured upon a mortgage of property, take possession of such property, the commissioners may, without prejudice to any other remedy, by notice in writing served at the office or last known place of address of the mortgagor, or where from any cause the same cannot be so served by notice in writing published in the prescribed manner, declare their intention to exercise the powers conferred by this Act, and thereupon the commissioners shall have and may exercise the same power as the mortgagor of making and levying the rate mortgaged, and for that purpose the commissioners or their secretary with their concurrence may appoint an officer who, subject to the direction of the commissioners, shall have and may exercise the same powers, authorities, and duties as if he had been appointed by the mortgagor.

The commissioners, in making an estimate of the rate to be

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levied for the purpose of paying any sum due, may add such sum as they think sufficient for defraying and may defray thereout all costs, charges, and expenses, including remuneration to any officer or other person employed, incurred by the commissioners in the execution of their powers under this section or otherwise by reason of the default in payment.

Any balance remaining in the hands of the commissioners shall be paid by them to the mortgagor.

The commissioners may, by a like notice, declare their intention to relinquish the powers conferred by this section, and that either absolutely or with reservations and conditions, and thereupon all such powers shall revest in the mortgagor, subject to the said reservations and conditions.

Liability of commissioners after taking possession or in default of payment.

24. When the Loan Commissioners have taken possession of any property under this Act, or exercised the powers conferred by this Act in relation to any rate, neither they nor their secretary, nor any person appointed by them in that behalf, shall be liable to account to any person interested in the equity of redemption in such property or rate for any moneys which, but for their wilful neglect or default, they or he might have received when so in possession or exercising such powers, or for any moneys other than those which have actually come to their or his hands.

Sale and mortgage by commissioners of mortgaged premises.

25. Where the Loan Commissioners have power to sell or mortgage, they shall have power to sell or mortgage either together or in parcels, by public auction or private contract, and subject to such conditions as to title or evidence of title or otherwise as the commissioners may think proper.

They may also buy in at any auction and rescind any contract for sale or mortgage, and resell or remortgage, without being responsible for any loss occasioned thereby.

Where a sale cannot be made in the ordinary way for a sum equal to the amount remaining due under the mortgage, the Loan Commissioners may, if they think fit, sell in such manner and subject to such conditions, stipulations, and agreements as they may think expedient for the purpose of ensuring the completion or carrying on of the work comprised in such mortgage by the purchaser thereof, with a view to the public good or general benefit, or for any other purpose, notwithstanding such

conditions, stipulations, and agreements may be prejudicial to the sale, or may not be beneficial to the persons interested in the equity of redemption in the property.

The Loan Commissioners may for the purpose of any sale or mortgage execute all such agreements, conveyances, and instruments as they may think fit.

Purchaser not liable to see to the validity of sale or application of money.

26. Every sale or mortgage made by the commissioners or their secretary, and purporting to be made in pursuance of this Act, shall, so far as regards the interest of the purchaser and mortgagee, be deemed to be valid, and the purchaser or mortgagee shall not be bound to see or inquire whether the sale or mortgage is authorized, nor in the case of a mortgage whether the money raised is required to be raised, nor as to the necessity or expediency of or authority for making the conditions, stipulations, or agreements subject to which the sale or mortgage was made, nor otherwise as to the propriety or regularity of such sale or mortgage, nor be affected by express notice as to any matters into which he is not bound to see or inquire.

The receipt in writing of the Bank of England, or one of their cashiers or other proper officer for the purpose of the Bank of England, or other prescribed receipt, shall be a full discharge for the money paid on the sale or mortgage, and the person paying the same shall not be bound to see to the application of such money, or be liable or in any manner accountable for the misapplication or non-application thereof.

Terms of lease, sale, or mortgage.

27. Any lease, mortgage, conveyance, or other disposition made by the secretary of the commissioners under this Act of any mortgaged property may be in the prescribed form, and shall convey to the person in whose favour such lease, mortgage, conveyance, or other disposition is made, and according to the terms thereof, all or any part of the estate, right, interest, powers, authorities, and privileges, which under the mortgage and this Act are vested in or capable of being exercised by the Loan Commissioners, or their secretary, either before or after possession taken, and the same shall thereupon be vested in and may be exercised and put in force by such person accordingly.

Nothing in this Act shall operate to invalidate or affect the

rights of any person entitled *bonâ fide* to any debt, estate, or interest, having priority over or ranking *pari passu* with the loan granted by the commissioners, or the security for such loan, or the rights of any lessee under any lease made either prior to such security or with the concurrence of the commissioners.

Application of money arising on taking possession, sale, mortgage, &c., by commissioners.

28. Any money arising from the taking possession, lease, sale, mortgage, or other disposition under this Act by or under the direction of the Loan Commissioners of any mortgaged property shall be applied first in discharge of all costs, charges, and expenses incurred by or under the direction of the commissioners in respect thereof, or otherwise by reason of the default in payment, and secondly in discharge of the whole of the principal of the loan secured by the mortgage and for the time being unpaid (notwithstanding that the same or any instalment thereof may not have become actually due), and in discharge of all interest accrued due on such principal, and of all other sums (if any) due under the mortgage.

The surplus (if any) of such money either shall be paid to the mortgagor or other person or persons entitled thereto, or, if the commissioners think fit, shall be paid by the secretary of the commissioners into the Court of Chancery in England in like manner as if he were a trustee of such money for the persons entitled thereto, and the court may make such orders for the payment and distribution of such money to or among those persons as may from time to time seem to the court just.

Payment of loan before it is due, and transfer of security for all or part of loan.

29. The Loan Commissioners may, if they think fit, at any time accept payment of the whole or any part of the principal and interest of any loan or other moneys secured by any mortgage under this Act before the time when the same is due; and may release or convey the mortgaged property or rate to the person paying the same, or as he may direct, upon such terms and conditions and in such manner and form as the commissioners may think expedient.

The person in whose favour any conveyance of the mortgaged property or rate under this section is made shall, subject to any limitations inserted therein, be entitled to the like priorities, powers, and authorities as the commissioners or

their secretary were entitled to, either subject to or with priority over or concurrently with any priorities, powers, and authorities reserved to the commissioners by the conveyance.

The commissioners shall have full power to enter into and concur in all such arrangements as they may deem expedient for the purposes of carrying into effect a release or conveyance under this section.

Discharge of security and revesting of property on repayment of loan.

30. Upon all moneys due under a mortgage under this Act being fully paid the commissioners shall, when required, give in the prescribed manner to the person liable to the payment thereof a receipt in writing for the same, and such further sufficient discharge (if any) as may seem to the commissioners to be necessary, and upon such receipt being given the mortgaged rate shall be released from the charge and the mortgaged property, or the part thereof not sold or disposed of under this Act shall (unless the commissioners, on the request and at the expense of the person paying the said money, make any other disposition thereof) revest in the person who would have been entitled thereto if the mortgage had not been made, subject nevertheless to any lease, mortgage, or other act previously made or done by or under the direction of the commissioners.

Bankruptcy of debtor.

31. Where an individual liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or insolvent, or enters into any composition or arrangement with his creditors, or has his affairs liquidated by arrangement, or takes the benefit of, or becomes subject to the provisions of any Act passed for the relief of persons in debt, or for enabling the property of such persons to be distributed among their creditors, or where any company liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or is wound up, the whole of such loan shall become due immediately, notwithstanding that the date for the payment thereof or part thereof has not arrived, unless in the case of a surety the commissioners think fit to accept some other surety.

Form of mortgage.

32. Every security given under this Act may be in such form as may be prescribed, and the fact of the secretary of the Loan Commissioners being a party thereto shall be conclusive

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evidence that the same is in the prescribed form, and every such security shall be valid and effectual to pass all the estate, right, and interest purporting to be passed thereunder by the parties executing the same, subject to the provisions of this Act.

Recovery of debts on personal security.

33. Every sum payable under any security made in pursuance of this Act shall be made payable to the use of Her Majesty, her heirs and successors, and may be recovered as a specialty debt due to the Crown, in like manner as if the security had been made in the form provided by the Act of the thirty-third year of the reign of Henry the Eighth, chapter thirty-nine; but no person shall be liable for any larger sum than that which he is expressed to be bound to pay.

Every sum payable in respect of a loan granted by the Loan Commissioners (either before or after the passing of this Act) or under the security for such loan, shall be compounded for or released only under the authority of Parliament in each case.

The Loan Commissioners may issue a warrant to the proper officer forthwith to enforce payment of such debt to the Crown as aforesaid, and if necessary to enter satisfaction therefor, and shall have the control over any proceedings taken to enforce such debt, and such proceedings shall not be discontinued, quashed, or abated without the written authority of the Loan Commissioners.

The Court of Exchequer, or other competent court, or any judge thereof, may, upon the production of the said warrant, direct an immediate writ of extent, or of *diem clausit extremum*, to issue without any writ of *scire facias* or any affidavit or other proof of the cause of the proceeding.

Nothing in this Act shall render it the duty of the Loan Commissioners to issue such warrant or to register such writ or debt, unless they are of opinion that it is necessary for the purpose of securing the payment of the debt, or that otherwise under the particular circumstances it is expedient so to do.

Recovery of loan after the expiration of term for repayment.

34. The expiration of the period within which a loan under this Act is made repayable (whether such period is the full period allowed by this or the special Act or a shorter period) shall not in any way affect any power of the Loan Commissioners of recovering or enforcing payment of any sum due in respect of such loan.

Supplemental Provisions as to Loans and Securities. Appendix.

Sect. 35.

Security for completion of works partly finished or not commenced.

35. Where the commissioners grant a loan in aid of any work which is either partly completed or not commenced, they may, by a bond to Her Majesty or otherwise, take such security for the application of the loan to the work, and for the due completion of the work (including the raising of sufficient funds for that purpose), as they may think sufficient for securing the interest of the public.

Examination as to proper application of moneys lent.

36. Where the Loan Commissioners advance any loan for any purpose on the security of a rate, it shall be the duty of the Local Government Board to satisfy themselves that the loan is applied to such purpose; they may from time to time make such examination as they may think necessary with a view to ascertain that such loan has been so applied.

The Local Government Board may appoint any officer to conduct on their behalf any examination under this section, and such officer shall have the same powers to require the attendance of persons and the production of accounts and other documents, so far as such attendance or production is required for the purpose of such examination, as an inspector of the Local Government Board has under the Acts relating to the relief of the poor.

Suspension of payment of principal and interest.

37. The Treasury may, on the recommendation of the Loan Commissioners, postpone for any time not exceeding five years the payment of the instalments of principal and interest, or either, due or to become due in respect of a loan granted by the Commissioners for the purpose of any work, and that upon such terms and conditions for the completion and improvement of such work, and the ultimate payment of such principal and interest, as the Treasury may on the said recommendation authorize.

Change of security.

38. The Loan Commissioners may, subject to the prescribed regulations, if under the circumstances of the case they think fit, accept any security in lieu of any security previously given to them, or of any part of such security, and that subject to such terms and conditions as they direct; so, however, that the

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substituted security shall be of the character which the commissioners might take if the loan were originally granted at the time of such substitution, and that no change of security under this section shall extend the period for the repayment of the loan.

Concurrence by commissioners in leases, sales, &c., of mortgaged property.

39. The Loan Commissioners may concur in any lease, conveyance, release, or other disposition of any property mortgaged under this Act, or any part thereof, and in the arrangements relative thereto, upon such terms and conditions as they may think fit, and either with or without consideration, so that in their opinion the payment, with interest, of the loan charged on the mortgaged property is sufficiently secured or is not thereby made less secure.

Special Provisions as to Borrowers.

Power to various authorities to mortgage and levy rates.

40. The justices for any county, or any riding, division, parts, or liberty of a county, in general or quarter sessions assembled, may (if they resolve by a majority of not less than five justices so to do) borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices room, and offices connected therewith, or any of such purposes, and may levy a rate or any increase of a county rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the county rate to the Loan Commissioners in accordance with this Act.

The council of any borough may borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices room, and offices connected therewith, or any of such purposes, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the borough rate to the Loan Commissioners in accordance with this Act.

The said justices and council respectively shall have power to give the mortgage in such manner and form as the Loan Commissioners may direct.

Miscellaneous. Appendix.

Sect. 41. Regulations by commissioners.

41. The Loan Commissioners may from time to time make regulations for carrying into effect this Act, and in particular with respect to the quorum and proceedings of the commissioners and the authentication of documents made or issued or directions given or acts done by them, and with respect to loans under this Act and applications therefor, and annual and quarterly statements of the amounts required to be borrowed, and the information to be given and conditions to be complied with by the applicants, and with respect to the forms to be used, including the forms of the securities, and with respect to any fees or sums to be paid by the applicants or by other persons dealing with such commissioners, and with respect to the relations between such commissioners and the National Debt Commissioners and the Bank of England.

Every such regulation shall be submitted for the approval of the Treasury, and as approved by them with such modifications and additions as they think fit, shall be published in the *London Gazette*, and when so published shall have effect as if it was enacted in this Act.

Every such regulation shall be laid before both Houses of Parliament as soon as may be after the making thereof if Parliament be then sitting, or if Parliament be not then sitting within one month after the then next meeting of Parliament. Every regulation, purporting to be made in pursuance of this section, shall after the expiration of six months after its publication in the *London Gazette* be deemed to have been duly made and to have been within the powers of this Act.

Regulations made under this section may be from time to time rescinded, altered, and added to in like manner as the original regulations.

Sects. 42 and 43 provide that fees payable to commissioners shall be paid into the Exchequer, and for keeping accounts at Bank of England, and audit.

Perjury.

44. Any person who, when examined by the Loan Commissioners in pursuance of this Act, or any regulation made under this Act, wilfully gives false evidence, or who, for the purpose

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of obtaining a loan under this Act, wilfully gives information to such commissioners which is false in any material particular, shall be guilty of perjury.

Sect. 45 relates to the authority of the Treasury to issue warrants, &c.

Receipt for money payable on account of loan, &c.

46. The receipt in writing of the Bank of England, or one of their cashiers or other the proper officer for the purpose of the Bank of England, and any other prescribed receipt for any money paid in discharge of the principal or interest of any loan granted under this Act, or of any sum due under any security made under this Act or otherwise payable to or by the direction of the Loan Commissioners or their secretary, shall be a complete discharge to the person paying the same.

Notices may be served by post.

47. Notices, directions, orders, and documents required by this Act, or by any regulation made under this Act, to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, until the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice, direction, order, or document was prepaid, and properly addressed, and put into the post.

Notices to and by commissioners.

48. Notices, and documents required by this Act, or by any regulation made under this Act, to be served on the Loan Commissioners, may be so served by serving the same on their secretary, or by sending the same addressed to or delivering the same at the office of the commissioners.

Notices and documents required for the purposes of this Act, or of any regulation made thereunder, to be served by or on the Loan Commissioners, or to be made or issued by the Loan Commissioners, shall be in writing or in print, or partly in writing and partly in print.

Sect. 49 refers to effect of schedules.

Application of Act to loans under special Acts.

50. Except so far as a special Act, by express reference to some part of this Act, alters that part, every loan made by the Loan Commissioners shall, notwithstanding any provision in

such special Act and any rule of law or custom, be made in accordance with and under the powers of this Act, and be repayable in manner provided by this Act, and by the security for the same granted under this Act, and every such loan, together with the security for the same, shall have the priority and be subject to the powers, authorities, and remedies mentioned in this Act; and although made in pursuance of a special Act, shall be deemed for all purposes to be a loan under this Act.

Definitions.

51. In this Act, if not inconsistent with the context,—

The expression "person" includes a body of persons, whether corporate or unincorporate:

* * * * *

The expression "financial year" means the year ending the thirty-first day of March:

The expression "prescribed" means prescribed by the regulations made under this Act with the approval of the Treasury:

The expression "special Act" means any Act passed before the passing of this Act which authorizes the Loan Commissioners to lend money for the purposes of any work mentioned in the first schedule to this Act and any Act passed after the passing of this Act, which authorizes the Loan Commissioners to lend money for any purpose:

The expression "security" includes a mortgage:

The expression "mortgage" includes a charge and any instrument in the nature of a mortgage or charge:

* * * * *

The expression "conveyance" includes any grant, assignment, transfer, or other disposition or assurance; and the expression "convey" shall be construed accordingly:

The expression "rate" means a rate, cess, or assessment the proceeds of which are applicable to public local purposes and leviable on the basis of a valuation of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate, as before defined, and the making and levy of a rate includes the issue and enforce-

Appendix. Sect. 51.

ment of any such precept, certificate, or instrument as aforesaid, and expressions relating to the making and levy of a rate shall be construed accordingly:

Any toll, due, rent, imposition, and other sum not being a rate as above defined shall be deemed to be property for the purposes of this Act.

All references to a mortgagor or borrower shall, if need be, be deemed to include a reference to the successors, heirs, executors, administrators, and assigns of, or other persons claiming through or under such mortgagor or borrower.

Sects. 52, 53, 54, 55, 56, 57 are omitted, as they relate only to the commissioners and to matters of no importance to councils.

SCHEDULES.

Appendix.

Schedule.

FIRST SCHEDULE.

Works for the Purpose of which the Commissioners may lend Money.

Baths and wash-houses provided by local authorities.

Burial grounds provided by burial boards.

Conservation or improvement of rivers or main drainage.

Docks.

Harbours and piers, and any work for which the Public Works Loan Commissioners are authorized to lend by section three of the Harbours and Passing Tolls, &c., Act, 1861. 24 & 25 Vict. c. 47.

Improvement of towns.

Labourers dwellings.

Lighthouses, floating and other lights for the guidance of ships, buoys, and beacons.

Lunatic asylums of any county or borough in Great Britain.

Police stations and justices rooms of any county or borough in Great Britain, and the offices connected therewith.

Prisons.

Public libraries and museums.

Any schoolhouse or work for which a school board is authorized to borrow under the Elementary Education Acts, 1870 and 1873, or any Act amending the same. 33 & 34 Vict. c. 70. 36 & 37 Vict. c. 86.

Waterworks established or carried on by a sanitary or other local authority. 35 & 36 Vict. c. 62.

Workhouses or poorhouses, and any work for which guardians of the poor are authorized to borrow under the general Acts relating to the relief of the poor.

Any work for which a sanitary authority are authorized to borrow under the Public Health Act, 1875.

* * * * *

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* * * * *

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